

COPYRIGHT ROYALTY TRIBUNAL

ORIGINAL

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In the Matter of: :
CABLE COPYRIGHT ROYALTY :
DISTRIBUTION PROCEEDINGS - : DOCKET NO. CRT 89-2-87CD
PHASE II :
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(This volume contains pages 233 through 372)

Room 458
1111 20th Street, N.W.
Washington, D.C.

Monday, December 4, 1989

The hearing in the above-entitled matter was
convened pursuant to Notice, at 10:00 a.m.

BEFORE:

J.C. ARGETSINGER	Chairman
MARIO F. AGUERO	Commissioner
ROBERT CASSLER	General Counsel

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P R O C E E D I N G S

(10:00 a.m.)

COMMISSIONER AGUERO: Good morning to everyone. As you all may know, the Tribunal changes chairmanship every year. I was Acting Chairman when Commissioner Ray left the office, and today it is an honor for me to pass the gavel to my dear and good friend, J.C. Argetsinger, who is going to be the next chairman of the CRT. Commissioner?

CHAIRMAN ARGETSINGER: Well, thank you, Mr. Chairman. Chairman Emeritus.

Well, today we will begin the Phase II Rebuttal. Mr. Gottfried, are you going to start out -- do you have a witness you are calling?

MR. GOTTFRIED: Does the Tribunal take brief openings on rebuttal? I don't know.

CHAIRMAN ARGETSINGER: Yes, they will.

MR. GOTTFRIED: Then I have a very brief opening, just to lay out what our rebuttal case will be.

CHAIRMAN ARGETSINGER: Before you --

COMMISSIONER AGUERO: Before we start --

CHAIRMAN ARGETSINGER: We left you there for a moment because we have a new Commissioner who is just coming onboard, Commissioner Cindy Daub. I don't believe Commissioner Daub will be participating in this particular proceeding, but she will be an observer. We are very glad to

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1 have her aboard.

2 COMMTSSIONER DAUB: It's great to be here, finally.

3 (Applause.)

4 CHAIRMAN ARGETSINGER: I will make one announcement
5 before we do start, about the submission of Findings of Fact
6 and the rebuttals, and we came up with the date of December
7 20 for Findings of Fact, and January 10 for the Reply
8 Findings.

9 And also, Mr. Gottfried, before we get into this--
10 Mr. Kennedy, did you want to submit some evidence for your
11 direct?

12 MR. KENNEDY: Yes. CTC Rebuttal Exhibit Number 9,
13 Joy Junction List, was submitted for rebuttal last time. It
14 was rejected, but allowed to be resubmitted as CTC
15 Supplemental Direct Exhibit Number 1, which I would like to
16 do at this time.

17 (Whereupon, the document was
18 marked for identification as
19 CTC Supplemental Exhibit No. 1)

20 CHAIRMAN ARGETSINGER: Are there any other
21 preliminary matters?

22 (No response.)

23 Mr. Gottfried?

24 MR. GOTTFRIED: Thank you. It's a pleasure to be
25 back once again, and to have a new Commissioner to address.

1 As the Commission will recall, the evidence that we
2 presented in our direct case based on the Special Nielsen
3 Report, showed that the Settling Devotional Claimants were
4 entitled to the lion's share of the royalties and, indeed,
5 that the Christian Television Corporation was entitled to
6 only a nominal award, and that that was the starting place
7 for any award to that organization.

8 What we have done on rebuttal is, we have presented
9 an alternative means of measuring the relative value of CTC's
10 program, and that alternative means is based on the
11 methodology that CTC itself urged that the Tribunal adopt--
12 namely, a time-based fee generation model.

13 What that study shows is that CTC is entitled to
14 less than one-half of 1 percent of the royalties -- indeed,
15 to less than .36 percent of the Devotional royalties -- and
16 that is, as the Tribunal will see, based on taking out
17 certain of the royalties attributable to the Lakeland
18 carriage of WCLF. Even if that carriage is counted, which we
19 don't believe that it can be because there was no willingness
20 to pay for that carriage, CTC's relative number comes out to
21 less than .88 percent of the total revenues.

22 COMMISSIONER AGUERO: How much?

23 MR. GOTTFRIED: .88 percent of the total revenues.

24 COMMISSIONER AGUERO: How much is that?

25 MR. GOTTFRIED: Of 1 percent.

1 COMMISSIOENER AGUERO: How much is that?

2 MR. GOTTFRIED: In dollars?

3 COMMISSIOENER AGUERO: In dollars.

4 MR. GOTTFRIED: About \$10,000. Well, that is of
5 the basic fund. I don't have the numbers in front of me,
6 Commissioner Aguero. The total fund was about \$1.4 million,
7 the total available. My recollection is something between \$1
8 million and \$1.1 million is the basic, and something around
9 \$300,000, \$250,000 of the 3.75 royalties. I think the
10 evidence also shows, was the next point, that there is no
11 basis for any entitlement to any of the 3.75 funds.

12 I know that the Tribunal has, in the past, rejected
13 any attempt to divide up Phase II awards into pots, on the
14 basis that there was no evidence showing that the carriage
15 was differential.

16 I think this year, and in this proceeding, we have
17 for the first time the most graphic kind of evidence that the
18 pot should be divided -- namely, that CTC is not carried on
19 any system that pays 3.75 royalties, generates none of those
20 royalties, and there can be no basis, we believe, for giving
21 them any money that they are not responsible for.

22 Again, a part of our rebuttal case will be, we
23 selected five stations just to show the Tribunal that the
24 other Settling Devotional Claimants are responsible for
25 generating royalties, and just the three claimants on those

1 five signals generate over \$300,000 in 3.75 royalties alone.
2 So, we know that pot, we submit, has to be awarded to the
3 Settling, and the percentage that we have come up with based
4 on fee generation or on Nielsen, of the basic fund, is a
5 nominal award to CTC.

6 In terms of adjusting those starting points, what
7 we submit and what we believe the testimony in rebuttal will
8 show is that, if anything, CTC's award should be decreased
9 from those starting points, and I think the most notable
10 testimony in favor of that kind of decrease is Ms. Ford's
11 testimony, which shows that CTC may well have abandoned any
12 interest they had in copyright, by giving their programs as a
13 gift, to anyone who wanted to pick them off the satellite.

14 Even if the Tribunal were to find that there was no
15 abandonment, however, any kind of a harm argument has much
16 less weight for CTC than it does for the other Settling
17 Devotional Claimants, and that is because they don't try to
18 control the distribution of their programs.

19 What we have urged in past proceedings -- and as
20 the Tribunal knows, it's been challenged frequently whether
21 we suffer any harm, but what we have urged and what I think
22 the Tribunal has accepted is, that we lose control of our
23 programs. We sign contracts with everybody. We insist, for
24 example, that there be no liquor commercials on the two sides
25 of our programs, and we do that by contract. And when

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1 someone picks it off on a distant signal, we can't control
2 that anymore, but CTC makes no attempt --

3 COMMISSSTONER AGUERO: Let me ask you something, Mr.
4 Gottfried. If I had a program and I copyrighted the program
5 and someone picked it up for free, do I lose my right as a
6 copyright owner?

7 MR. GOTTFRIED: No. It seems to us it's not
8 important whether you pay for it, whether you barter it, or
9 whether they pay you for it. The point is that you keep
10 control by having some kind of a license agreement.

11 COMMTSSIONER AGUERO: But you don't lose the
12 copyright. If you copyright a program and someone else picks
13 it up for free -- I have a copyright, I still own the
14 program.

15 MR. GOTTFRIED: That's correct.

16 COMMTSSIONER AGUERO: It doesn't matter if they pay
17 me or they don't pay me any money.

18 MR. GOTTFRIED: That's correct, or you could even
19 pay them. You can give them a license that says "I will pay
20 you to carry it", but the point is that you are giving them a
21 license.

22 And I don't even know if it matters that it's a
23 written license. It's my understanding that some of the
24 stations that NAB represents, for example, do it on an
25 informal basis. Someone will call them and say "Is it all

1 right if I carry your program?" And they say "Yes, you have
2 permission", and any copyright owner can do that.

3 Someone was reminding me of law reviews, for
4 example. They will call up another author and say "Can I use
5 your material?" And they say "Yes, you have my permission",
6 and there's no charge, but the point is that you keep
7 control, and if you don't control, and if you don't control
8 repeatedly and as a practice, at some point you don't have a
9 copyright anymore. You've donated it to the world. And we
10 think that the testimony of Mr. Kennedy is striking, but
11 that's what it seems, that CTC has intended to do.

12 COMMISSIONER AGUERO: Thank you.

13 MR. GOTTFRIED: In terms of the bulk of our
14 rebuttal testimony is that the Commission is aware that a
15 claim has been made for 15 percent, and the bulk of it is to
16 go through and show why we don't believe that any of the
17 basis of that 15 percent has any merit.

18 Five percent is based on fee generation. What Dr.
19 Clark will testify is that that is a bogus number, a
20 nonsequitor, a red herring; it just has no significance. If
21 the Tribunal is going to use a number from fee generation,
22 then the number is less than .36 percent, less than one-half
23 of 1 percent, not 5 percent.

24 In terms of the unclaimed funds, again, we think
25 that's a non-issue. What the Tribunal has said is, it's task

1 is to measure the relative value of the people before us, the
2 Settling Claimants and CTC, and to make an award on that
3 basis. The unclaimed funds disappear. They are not a
4 consideration. No one gets a bonus. Everyone gets its part
5 of all the funds, and that takes care of the unclaimed funds.

6 If we are entitled to 99.6 percent of the funds,
7 then we get 99.6 percent of all the funds. If he's entitled
8 to .4 percent of the funds, he gets it of all the funds. He
9 gets part of the unclaimed funds, too, but there's no bonus
10 award merely because there's unclaimed funds.

11 And, finally, on the five criteria -- I will just
12 go through very briefly -- marketplace value, benefit -- the
13 Tribunal has held that the best measure of that is the
14 Special Nielsen Study. Again, the Special Nielsen Study
15 shows CTC is entitled to a nominal award. If the Tribunal
16 wants to switch gears now and use a fee generation model to
17 measure those two criteria, we're down to less than .36
18 percent.

19 In terms of quality, we all have quality. We don't
20 throw stones at Mr. Kennedy's programs. I'm sure he doesn't
21 throw stones at our programs. No bonus points to anybody.
22 And in terms of harm, again, Ms. Ford's testimony shows that
23 it's difficult to see how Mr. Kennedy is harmed in any way
24 compared to us, and Dr. Clark will also have some comments on
25 the claim of lost potential benefit.

1 Again, the point becomes similar though. If Mr.
2 Kennedy is unable to do direct mailing, it's what I think
3 Commissioner Coulter used to call "self-inflicted harm". All
4 he needs to do is get license agreements from the people he
5 deals with, and then he'll know where his programs are
6 carried and, if he chooses not to do that, the Tribunal
7 shouldn't reward him for his decision not to do that.

8 And, finally, we will just have one other brief
9 witness, Bruce Jacobs, to give the Commission some
10 information we promised on direct, and just to confirm that
11 the Larson study is not an accurate study of distant
12 carriage, that there are signals listed there as distant
13 that, in fact, turn out to be local.

14 I think as Mr. Larson testified, MPAA, when it does
15 the Special Nielsen Study, goes and reconfirms each of those
16 statements of account, to make sure that what is being
17 reported as distant is really distant. Mr. Larson -- it's not
18 his fault and it's not his job, but he doesn't have the
19 resources nor does he have the mandate to go that kind of
20 check on the big study that he gives us and, therefore, it is
21 not a reliable, or not a fully reliable measure.

22 What we've done on our .36 number is given the
23 Tribunal apples to compare with apples, as Mr. Cassler said
24 last time. If the Tribunal wants to use a fee generation
25 study, and if the Tribunal wants to assume that Larson is

1 more or less accurate, then that's the number we come to.

2 I have nothing further. Thank you for your time.

3 CHAIRMAN ARGETSINGER: Mr. Kennedy, do you want to
4 make any remarks at this time, or would you rather make your
5 remarks --

6 MR. KENNEDY: I'll make my remarks during the
7 cross-examination.

8 MR. GOTTFRIED: We call as our first witness, Dr.
9 David Clark.

10 CHAIRMAN ARGETSINGER: Welcome back, Dr. Clark.

11 THE WITNESS: Thank you, and congratulations to you
12 on your new position here.

13 CHAIRMAN ARGETSINGER: Thank you. You, of course,
14 remember you are still under oath from several weeks ago.
15 Whereupon,

16 DR. DAVID CLARK
17 was called as a witness and, having been previously duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. GOTTFRIED:

21 Q Before we begin the substance, Dr. Clark, I
22 understand that there is a small correction in your resume
23 and that as of January 1st, you will no longer be Dean of CBN
24 University?

25 A Yes. The name of the university has been changed

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1 effective January 1, 1990, to start a new decade, to Reagent
2 University.

3 Q Dr. Clark, are you familiar with the testimony that
4 Mr. Kennedy has given to this Tribunal?

5 A Yes, I am.

6 Q And based on your familiarity with that testimony,
7 have you changed your view of what award you believe it is
8 appropriate be made to CTC?

9 A No, I haven't changed my view.

10 Q And what is your opinion on what award should be
11 made?

12 A Well, my opinion is that based on the testimony
13 that Mr. Kennedy has provided, or the material that Mr.
14 Kennedy has provided, CTC is entitled to a nominal award, and
15 I think if we go through the various criteria, it will become
16 apparent that while they are doing a fine job of programming
17 in central Florida, to generalize their carriage as a distant
18 signal, from a few cable systems in central Florida to the
19 entire United States, doesn't really make a whole lot of
20 sense, and I think the basis of what I am saying is that we
21 have to look at the entire universe of all devotional
22 programming, not just what is happening in that one small
23 part of the country.

24 COMMISSSTONER AGUERO: May I ask a question, Mr.
25 Gottfried?

1 MR. GOTTFRIED: Please.

2 COMMISSIONER AGUERO: Dr. Clark, in your testimony
3 on page number 8, last night I read it again and again and
4 again, and I almost called Chairman Argetsinger looking for
5 help because you said here "Even if the ^{CTC}~~CRT~~ were not to adopt
6 a time-based fee generation model, CRT will be entitled to
7 less than one-half of 1 percent", and I said, my goodness, we
8 won't have money to pay our payroll next week.

9 MR. GOTTFRIED: Oops.

10 (Laughter.)

11 THE WITNESS: CTC -- I'm sorry.

12 COMMISSIONER AGUERO: I was very worried, and I
13 said, well, we don't have any money to pay for even the
14 papers and pencils. I called -- I found that around 12:00
15 o'clock, and J.C. said "Just leave it", you know.

16 CHAIRMAN ARGESINGER: Well, you know, our budget
17 isn't much more than that, so it might cover it.

18 (Laughter.)

19 COMMISSIONER AGUERO: I'm sorry for my
20 interruption, Mr. Gottfried.

21 THE WITNESS: Yes. That's obviously "CTC" because
22 we wouldn't want to discourage the new Commissioner on her
23 first day.

24 BY MR. GOTTFRIED:

25 Q Now, you understand, Dr. Clark, that Mr. Kennedy

1 has claimed 15 percent of the fund for CTC?

2 A Yes, I understand that.

3 Q And what I want to do this morning is go through--
4 and that that claim is based on three elements -- turning to
5 page 1 of your testimony - 5 percent based on fee generation,
6 and 5 percent based on unclaimed funds, and 5 percent based
7 on the criteria.

8 A One percent for each criteria.

9 Q And I want to go through each of those elements
10 with you this morning. First, let's look at fee generation.
11 It's my understanding that a study has been done of the
12 relative fee generation of the various Devotional Claimants?

13 A Yes. We -- in order to be able to compare apples
14 to apples, more or less, we had a study done which appears
15 here as Exhibit Number 5 and Exhibit Number 6, and these
16 reflect a similar approach to what Mr. Kennedy has taken in
17 examining fee generation.

18 Now, recognizing that the Tribunal has ruled
19 consistently this is not the only way to determine awards, we
20 felt it useful to do this in order for us to be able to have
21 some comparative data.

22 Q Now, turning to page 6 of your testimony, toward
23 the bottom of the page -- by the way, the mechanics of this
24 study, that was done by Ms. Moldenhauer?

25 A That's right.

1 Q And I gather she's more familiar than you are with
2 the actual way the numbers were generated?

3 A That's correct. I reviewed the summary data which
4 we have here.

5 Q And what was the finding about the total fees
6 generated by the Settling Devotional Claimants?

7 A If you look at the exhibit, the totals there on the
8 bottom of the page, the summary data under Exhibit 5, just
9 CBN, PTI, and Old Time Gospel Hour generated a total of
10 \$707,762 for the first part of '87, and \$765,604 for the
11 second part of '87, using this fee generation analysis.

12 Q And that's a total of \$1,473,366.90?

13 A Yes.

14 Q Now, you mentioned that that was just the programs
15 of the three Claimants?

16 A That's correct.

17 Q That was all the programs of those three Claimants
18 -- for example, Super Book and those sorts of programs, too,
19 is that right?

20 A Yes, that's correct.

21 Q But it did not include --

22 A It did not include other claimants with which a
23 settlement has been made, which I am not familiar with the
24 details of, but Oral Roberts and Charles Stanley and others.

25 Q And these numbers would go up -- that \$1.4 million

1 figure would go up if those people were included?

2 A Yes. I think it's clear that if those programs
3 were included, which are carried widely as distant signals,
4 that the fees, the total fees generated by devotionals, would
5 be significantly higher than they are here. We have no way of
6 knowing what that would be, short of another analysis.

7 Q And that would mean that CTC's percentage of the
8 royalties would necessarily go down, and is that why you've
9 talked about less than .36 percent and less than .88 percent?

10 A Yes, and I make that point on page 7, at the top of
11 the page. The figure we'd be looking at in the \$13,073.55,
12 which was the amount CTC generated as recalculated by the
13 Moldenhauer study, is .88 of 1 percent but, obviously, if
14 there were more devotional claimants, the percentage here--
15 if they generated a bigger number, this percentage would have
16 to go down, the \$13,000 representing a smaller percent of the
17 total amount.

18 For example, this is roughly \$1.4 million. Let's
19 assume there were another million there that could be
20 generated through a study like this, from the other
21 Devotional Claimants, just for example. Then the \$13,000
22 would represent significantly less of, say, \$2.4 million,
23 than it does of \$1.4 million.

24 Q Well, would it be fair to say that the number would
25 be something more like three-quarters of 1 percent?

1 A Yes.

2 Q And then another study was done which didn't
3 include carriage of CLF in Lakeland, Florida?

4 A Yes.

5 Q And can you explain briefly why that was done?

6 A Well, my understanding is that CLF in Lakeland
7 agreed to carry CTC only -- excuse me -- the cable system in
8 Lakeland agreed to carry CLF only if they were paid the fees,
9 the copyright fees, they were having to pay for the carriage
10 of the station.

11 So, therefore, since they were unwilling to pay,
12 one way to figure this would be to subtract those fees which
13 were generated, which can be seen in Exhibit 6 -- those are
14 the fees for CLF, \$8,370.75. If that were subtracted from
15 the \$13,073, the result would be a figure of around \$5,275.

16 If you use that as the basis of settlement, \$5,275,
17 it would represent .36 of 1 percent of the Devotional
18 royalties generated by CBN, PTL, Old Time Gospel Hour and CTC
19 together.

20 Again, if we added some of these other devotionals
21 with which there has been a settlement reached, to this, it
22 would decrease it yet further, to something like .25, a
23 quarter of 1 percent.

24 Q Now, in terms of the 3.75 royalties, I don't think
25 you are familiar with whether CTC generated any of those

1 royalties, is that correct?

2 A No, I have not -- beyond what you said this
3 morning, that they did not, I heard you say that.

4 Q But you have no reason to question my statement
5 that the Larson study showed that there were no such
6 royalties generated by CTC, do you?

7 A No. Most of those royalties are generated by major
8 stations like WTBS, WOR, WGN, the big, so-called
9 Superstations, my understanding is, generate most of those
10 3.75 royalties.

11 Q Turning your attention to Exhibit Number 9, is it
12 your understanding that Ms. Moldenhauer did a summary study
13 of 3.75 royalties generated?

14 A Yes.

15 Q And what did that study show?

16 A Well, I think we can see there that for the first
17 half of '87, for CBN, PTL, OTGH, we are seeing just from
18 those top stations, \$146,369 for the first half of '87,
19 \$173,939 for the second half of '87.

20 Q And we just don't know whether royalties were
21 generated by other stations, is that right?

22 A No, not on the basis of any data I've seen. I have
23 no way of knowing it.

24 Q And we don't know whether Oral Roberts generated
25 such royalties?

1 A No.

2 Q But assuming they did, these numbers would go up?

3 A Yes.

4 Q And this is, again, time-based, is that right?

5 A Yes.

6 Q All right. Now, let's go back. I think you said
7 you are familiar with Mr. Kennedy's case. Do you recall that
8 there was a number of 5.65 emphasized in that case -- 5.65
9 percent?

10 A Yes.

11 Q And that's quite different than the kinds of
12 numbers that you're suggesting these relative studies show?

13 A Yes, indeed, it is. The 5.65 is based on a measure
14 of the percent of the universe of just a few cable systems in
15 central Florida. And so, therefore, it would be akin to
16 saying because their programming represents 5.65 percent of
17 the fees generated on these few cable systems in central
18 Florida, that somehow that can be generalized nationally
19 when, in fact, the programs aren't carried nationally in
20 other states or other systems. So, I think therein lies the
21 issue.

22 The issue is, those fees have to be considered not
23 in the light of that universe of Florida, but the entire
24 universe of fees generated by cable systems in the country.

25 Q I think you'd come up with an analogy, when we were

1 talking about this last night --

2 A Well, it's more -- I sort of alluded to it, which
3 is essentially that it would be like saying that CTC's
4 performance in Florida somehow entitles it to fees from all
5 the other states in which it has no presence whatsoever.

6 So, I think it's clear that that would not be an
7 appropriate way to award fees -- at least it is clear to me.

8 Q And I gather the hypotheticals that you've given,
9 starting on page 2, just attempts to go through and show why
10 that doesn't work?

11 A Yes, exactly. What I was attempting to do there
12 was to demonstrate that you could have a situation in which
13 you generated 90 percent of the fees, or in this case 5.65
14 percent of the fees, but if you don't look at the universe,
15 it's meaningless. Five percent, 5 percent of what? That's
16 the key issue. And that's the point I tried to make
17 throughout my testimony.

18 Q Just briefly, if we turn to Exhibit R-2 and Exhibit
19 R-3, that shows two stations, each generating 90 percent of a
20 small universe, is that right?

21 A Yes, these are two hypothetical cases -- WXXX and
22 KYYY. One generates \$28 and 90 percent of that, as you can
23 see, is \$25.50; the other generates \$10,000, 90 percent of
24 that, likewise, would be \$9,000, and the point is,
25 percentages, short of looking at the universe of programming,

1 are not a very meaningful way of getting at what someone
2 should be awarded.

3 Q And you couldn't give 90 percent to both these
4 stations?

5 A No.

6 Q Nor could you give 5.65 percent to every station
7 that generated 5.65 percent of a small universe of stations?

8 A You'd soon run out of percentages, at that rate.

9 MR. GOTTFRIED: I have nothing further on the fee
10 generation portion of Mr. Kennedy's claim. If the Tribunal
11 would like to ask questions about that now, I would certainly
12 welcome it.

13 CHAIRMAN ARGETSINGER: No.

14 BY MR. GOTTFRIED:

15 Q Why don't we turn to the unclaimed funds. You
16 understand that Mr. Kennedy has claimed some kind of bonus
17 for unclaimed funds, is that right?

18 A Yes. The idea is that these funds are somehow
19 sitting there waiting for someone to come along and say that
20 somehow they have a claim on them, and my contention is that
21 they are not unclaimed. They are really unassigned funds,
22 which are assigned upon the Tribunal's determination of how
23 the funds are to be given relative worth and assigned among
24 the Devotional Claimants -- or assigned to the Devotional
25 Claimants.

1 Q Now, you say to the Devotional Claimants who have
2 made claims?

3 A Who have made claims, that's correct. As I said
4 this morning, in some ways it's really a misnomer. A better
5 term would be unassigned funds because they are there to be
6 assigned for those who have made claims.

7 Q According to the value of those claims.

8 A Yes.

9 Q And we are not asking for a bonus, are we, of those
10 funds?

11 A No, we're not.

12 Q I mean, we don't want more than what our share
13 shows we're entitled to?

14 A That's correct.

15 Q Now, in terms of the one point for each of the
16 criteria -- this is starting on page 10 of your testimony.
17 Why don't we go through the criteria one at a time. We have
18 marketplace value -- well, then we have benefit. I guess we
19 can take those together.

20 A Well, the marketplace value -- the Tribunal has
21 determined that the best way to determine value is through
22 rating information through the Nielsen, and to say that one
23 is entitled to 1 percent, you would have to claim, or
24 substantiate a claim that said you had 1 percent of the total
25 audience or all devotional viewing, on that basis.

1 Obviously, if every Christian station in the
2 country, of which there are something like 300, claimed that
3 they were entitled to 1 percent on this, that alone, to say
4 nothing of the 50 or so national program producers who
5 syndicate television programs nationally, devotional
6 programs, I think it's very clear that that kind of a claim,
7 short of audience information which demonstrates that there
8 is an audience there, a national audience of some kind, that
9 that kind of a claim for 1 percent doesn't make a lot of
10 sense, or at least can't be substantiated.

11 Q And benefit?

12 A Well, I think it has to be said for CTC that they
13 are doing, for a small but growing Christian group of
14 stations, they are doing a lot of original programming. I
15 think that's to be commendable -- to be commended and is
16 commendable, I should say.

17 The challenge of making programs and producing
18 programs on a daily basis not only is very demanding in terms
19 of the personnel involved, but the costs are difficult to
20 handle, and they are doing a lot of original programming.
21 So, there certainly is some benefit for the limited cable
22 systems they are on.

23 Unfortunately, they are not a nationally syndicated
24 -- their programs are not nationally syndicated, for the most
25 part, and so I think benefit has to be looked at from the

1 standpoint of what, again, the Tribunal has said and the
2 contention we have made for devotional programs, is the main
3 benefit it brings to the cable systems is, it helps to
4 attract audiences, number one and, number two, I think
5 there's also some benefit in that cable systems have a reason
6 to want to maintain good local relationships with the local
7 communities that they are in, the cities and towns that they
8 are in, and very often in their process of maintaining their
9 licenses and so forth, the carriage of devotional programs is
10 a plus for them.

11 And the analogy I've used in testimony before is
12 that a cable operator really, in effect, is trying to create,
13 if you will, a bouquet of different programs that are
14 available to a wide variety of audiences, and that bouquet,
15 if you will, is what brings larger numbers of subscribers in.

16 It may be that one subscriber may not especially
17 like devotional programming whereas another would, and it's
18 that benefit that's to be derived. And I think -- again, I
19 would reiterate that I think the point CTC has made, and Mr.
20 Kennedy has made, is that they are doing programming,
21 original programming, and I think that's to be commended, and
22 it does add, on those systems they are on, a certain benefit.

23 Q But that is a small part of the universe?

24 A A very small part of the cable universe.

25 Q And I gather your testimony is that the Settling

1 Devotional Claimants are conferring the same kind of benefit
2 for a larger universe?

3 A Yes. It's a matter of being a national program
4 that can be seen anywhere in the United States versus having
5 coverage -- you know, being seen on stations throughout the
6 United States that are recarried by cable systems versus
7 having coverage in a relatively small area of Florida.

8 Q Now, the third major criteria is harm. Are you
9 familiar with Mr. Kennedy's testimony about the difficulty in
10 doing direct mailing to those who watch on distant signals?

11 A Yes, I am. I read that carefully, and I find that
12 most Christian broadcasters develop mailing lists. The main
13 argument was that lack of knowledge of where they are carried
14 prohibits them from doing mailings and soliciting support.

15 In actual fact, most religious broadcasters that
16 I'm familiar with -- and CTC may differ from this, but the
17 ones that I'm familiar with -- do not do general mailings
18 apart from a mailing list they have developed from those who
19 have called in, and there's nothing prohibiting a viewer
20 being carried in a market that CTC was unaware of -- there's
21 nothing prohibiting them from calling in. So, certainly, on
22 that basis, a mailing list can be developed. There's no
23 reason that it can't be developed.

24 The issue of harm, though, was that not knowing the
25 communities that they were in, presumably then, they could

1 not do general mailings, such as zip code mailings and
2 mailings in so-called tip-in sheets in the cable billings,
3 the monthly cable billing. And in that case, it's not so
4 much harm as really a lost opportunity, potentially lost
5 opportunity, for additional fundraising, but being carried in
6 a distant market doesn't per se limit them from fundraising.
7 In other words, someone who is in a market that they are
8 unaware of, who calls their number, is going to get an
9 answer, anywhere in the United States.

10 And, so, I think that the issue there is the harm
11 comes about more through loss of potential additional income,
12 but not really loss of basic income. In fact, I would be
13 interested in knowing the extent to which CTC does mailings
14 beyond those people who have called in to them and more or
15 less indicated an interest in being on a mailing list. I
16 have no way of knowing that.

17 Q And how does a producer like CBN learn when its
18 programs are being carried?

19 A Well, the way we control that issue is, we require
20 stations -- some of this carry our programs free, some of
21 which carry our programs for pay, some of which pay us for
22 carrying programs -- they must sign a contract with us, or a
23 letter of intent, so that we have a record of who is carrying
24 us, and we work very hard at that, to try to maintain a
25 contractual relationship.

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1 IOn any case, if we have no written contract, we
2 certainly have a verbal agreement until a written contract
3 can be achieved. For the most part, I think we have very
4 good control of that sort of thing.

5 Q You've read Mr. Kennedy's testimony, and you
6 understand that he does not maintain such contracts?

7 A Right.

8 COMMTSSIONER AGUERO: Dr. Clark, How much is your
9 percentage in the following license? If you have ten
10 stations, how many stations are you giving the program for
11 free; how many pay you; how many do you pay them, more or
12 less? Do you have any --

13 THE WITNESS: Let me explain one thing. It depends
14 what program we're talking about. If it's the 700 Club, it's
15 probably about 80 percent paid, we pay.

16 COMMISSIONER AGUERO: You pay them?

17 THE WITNESS: We pay them, for the 700 Club. For
18 programs like Super Book, Flying House and programs like that
19 are syndicated, and the payment is often in terms of trading
20 against free time for the 700 Club.

21 COMMISSIONER AGUERO: Trading?

22 THE WITNESS: Yes. In other words, we'll give them
23 those programs to run free if they will, in turn, run the
24 700 Club free. And, so, there is a dollar value to that--
25 namely, what we don't have to pay to clear the 700 Club.

1 There are cases, though, where we actually sell
2 syndicated programs to stations for one, or two, or three
3 plays, and I don't have those at hand, but I would say,
4 generally speaking, that in the case of the Club -- and this
5 would just be a guess -- 70-80 percent would be paid, the
6 other part would be traded. In the case of Super Book and
7 Flying House, the percentages would be the opposite -- the
8 vast majority would pay to use those programs, and that's the
9 way it breaks out.

10 We are still successfully selling a soap opera,
11 which we have 875 episodes of, called Another Life. That's
12 for pay or for barter against pay. So, it would be the Club
13 that primarily we would pay for syndication whereas these
14 other programs, we would derive revenue either directly or
15 indirectly for, but I'm sorry, I don't have the exact
16 percent.

17 COMMISSSTONER AGUERO: Thank you very much.

18 BY MR. GOTTFRIED:

19 Q Are you aware of any payment ever having been made
20 to a cable system who was unwilling to pay for distant
21 carriage of one of your programs?

22 A No, we do not pay cable systems. In around 1986,
23 the CBH Cable Network began charging cable systems.

24 Q That's for the cable network.

25 A That's for the cable network. No, we have not paid

1 cable systems to carry our programs.

2 Q So, to the best of your knowledge, any royalty
3 that's reported in this Larson study, as having been paid for
4 the Settling Devotional programs, was actually willingly
5 paid?

6 A Yes.

7 Q The cable system may not have liked it, but they
8 paid it.

9 A That's right. Whether it was happily paid or not,
10 I couldn't say.

11 Q Dr. Clark, just before we finish, I think we've
12 gone through -- Exhibit Number 1 is your testimony to this
13 Tribunal, is that correct?

14 A That's correct.

15 Q And the declaration on the last page of Exhibit
16 Number 1, is that your signature?

17 A Yes, it is.

18 Q And this testimony is to the best of your
19 knowledge, true and correct?

20 A Yes, it is correct, with the permission to make the
21 one correction so that we are not depriving the CRT of its
22 necessary funds to operate.

23 Q And Exhibits 2 and 3 are part of your testimony,
24 and we've discussed those exhibits.

25 A That's correct.

1 MR. GOTTFRIED: I would move that this testimony be
2 accepted as part of the record of this proceeding.

3 CHAIRMAN ARGETSINGER: Without objection, it will
4 be so entered.

5 (Whereupon, the Settling
6 Devotional Parties' Exhibits
7 were received in evidence)

8 MR. GOTTFRIED: I have nothing further. Thank you.

9 CHAIRMAN ARGETSINGER: Commissioner?

10 COMMISSSTONER AGUERO: Only one question, Dr. Clark.
11 I remember in the other proceeding, that you mentioned that
12 CTC was entitled to between \$100 and \$1,000. In this
13 testimony you said they are entitled to only \$100.

14 Why don't you say in your testimony the difference
15 between \$1,000 and \$100?

16 THE WITNESS: Yes, I do recall that. The point I
17 was trying --

18 COMMISSSTONER AGUERO: This is just a question for
19 me to be sure CTC requires from the Devotional Claimants --

20 THE WITNESS: You're referring to page 1?

21 COMMISSSTONER AGUERO: Page 1, yes.

22 THE WITNESS: What I was getting at here is that if
23 we looked at the total universe of syndicated devotional
24 programming, programming viewed as distant signals, and we,
25 in fact, could measure that entire universe, which we know

1 for various reasons the limitations of the studies and data
2 we have in hand and so forth makes it difficult to do, but
3 the data we have here excludes Devotional Claimants with
4 which we've settled. It also excludes some claimants who
5 have not made any claims, but if the entire universe could be
6 assembled, I think we'd find that the CTC claim seen in that
7 entire universe, would not justify much more than a nominal
8 award.

9 What I said last time was \$100, \$1,000, I would
10 consider that a nominal amount in this situation. And I
11 wasn't trying to define for the Tribunal what was nominal,
12 but I think it's very clear that while these folks are doing
13 a fine job where they are there in Florida, with the stations
14 they have, in actual fact, their carriage as distant signals
15 is a nominal amount relative to the total devotional programs
16 that are being carried as distant signals. That's really
17 what I was trying to say.

18 And I'd prefer not to fix an amount. I think that
19 the Tribunal certainly has the ability, based on the total
20 universe of programs beyond just devotional that you look at
21 to determine what that might be.

22 CHAIRMAN ARGETSINGER: Well, Dr. Clark, somewhat on
23 this point -- and I don't want to get into your strategy of
24 why you presented your case in one way or another -- but on
25 page 7 when you talk about the fee generation and you

1 indicate that it would have been less if you had put the
2 other Settling Parties in there, I'm just curious -- you are
3 leaving it to us, of course, to figure that in.

4 THE WITNESS: I do not know, and did not ask, what
5 the settlement was with the other parties, so I can't fix
6 that, but it would certainly be -- if those had been included
7 here in this calculation, I think it's clear it would have
8 decreased this substantially, and I would estimate around a
9 quarter of 1 percent.

10 CHAIRMAN ARGETSINGER: Well, you probably could
11 have done that without even disclosing what your settlement
12 was with the other parties.

13 THE WITNESS: Yes. Well, I don't know what the
14 settlement was.

15 CHAIRMAN ARGETSINGER: Right. And, of course, we
16 don't either. So, to sum up what you're saying, you're being
17 a little generous here with your figure, that's your
18 position.

19 THE WITNESS: Yes.

20 CHAIRMAN ARGETSINGER: General Counsel has a
21 question.

22 MR. CASSLER: Dr. Clark, on page 6 of your
23 testimony, you say the Settling Devotional Claimants
24 generated \$1,473,000 in 1987 royalties?

25 THE WITNESS: That's correct.

1 MR. CASSLER: Is that strictly the basic fund?

2 THE WITNESS: No, that is, I believe, all three
3 funds.

4 MR. CASSLER: Later on in your testimony, you've
5 said that compared to that, CTC only generated .36 percent of
6 the basic fund and zero of the 3.75 percent.

7 THE WITNESS: They generated no 3.75 percent fees.

8 MR. GOTTFRIED: I think that's two funds.

9 MR. CASSLER: The \$1.47 million represents two
10 funds.

11 MR. GOTTFRIED: Basic and 3.75. He didn't break it
12 out for us. It's actually total fees generated.

13 THE WITNESS: That's my understanding.

14 MR. GOTTFRIED: It may even include Syndex, but
15 it's whatever number CTC used, we used.

16 CHAIRMAN ARGETSINGER: And this, of course, is
17 different from the actual award that you received for this,
18 that the Devotionals received -- this is the fee generation?

19 MR. GOTTFRIED: Well, interestingly, it's quite
20 close.

21 CHAIRMAN ARGETSINGER: Yes, I got confused because
22 they are close.

23 THE WITNESS: It's close. My understanding is this
24 breaks out roughly 60 percent regular fees, 20 percent 3.75
25 and 20 Syndex, but that would be a guesstimate. I would have

1 to do some more digging, but that was my understanding of how
2 this fee was generated.

3 MR. CASSLER: Dr. Clark, you say on page 10 that
4 they would obviously have to fit somewhere in between .36
5 percent and zero percent, but if you took \$1.47 -- \$1.47
6 million represents the total amount and the figure you used
7 for CTC represents the total amount, wouldn't the .36 percent
8 apply, and you wouldn't have to lower that to zero, somewhere
9 between that and zero.

10 MR. GOTTFRIED: But it says zero percent of the
11 entire -- of the 3.75 fund. I see what you're saying.

12 MR. CASSLER: You see what I'm saying? There's a
13 problem in the comparisons here.

14 THE WITNESS: So, what you're saying is, .36
15 percent or less of the entire fund?

16 MR. CASSLER: Yes, in order to make the comparisons
17 operate between that and what you offered on page 6.

18 THE WITNESS: Right. I agree with that. That
19 would be correct.

20 CHAIRMAN ARGETSINGER: Commissioner Daub, do you
21 have any comments?

22 COMMISSIONER DAUB: No.

23 CHAIRMAN ARGETSINGER: Commissioner Aguero?

24 COMMISSIONER AGUERO: No, I have no more comments.

25 CHAIRMAN ARGETSINGER: Mr. Kennedy, would you care

1 to cross-examine?

2 MR. KENNEDY: Could we take about a five-minute
3 break?

4 CHAIRMAN ARGETSINGER: We certainly can.

5 (Whereupon, a short recess was taken.)

6 CHAIRMAN ARGETSINGER: Mr. Kennedy?

7 CROSS-EXAMINATION

8 BY MR. KENNEDY:

9 Q Dr. Clark, the MPAA-Special Nielsen Study the
10 Settling Devotional Claimants are basing their case on is
11 made up of 119 broadcast stations carried by distant cable
12 systems.

13 Of those 119 stations, do you know how many were
14 specialty stations?

15 A I really don't know how many were specialty
16 stations. I haven't looked at that part of the study. I am
17 familiar with one station, it's a CBN station, KXTX, that was
18 a specialty station.

19 Q Was it in 1987?

20 A Yes.

21 Q Okay. During your direct examination by Mr.
22 Gottfried, I got the impression that you don't realize that
23 CTC reaches out beyond central Florida, is that correct?

24 A No. What I was saying is the recarriage of CTC is
25 essentially in Florida. When you say reach out, do you want

1 to define that?

2 A Okay. Recarriage, basically, is what I'm saying,
3 on distant stations.

4 A Well, whatever the extent, the fees generated, I
5 think, are pretty clear, but it may reach into northern
6 Florida or southern Florida.

7 Q Can I show you CTC Rebuttal Exhibit Number 10,
8 which was included in my testimony. Do you have that before
9 you?

10 A No, I don't have that.

11 Q (Handing document) It's the Larson report of
12 distant systems. Here is WCLF. The number of subscribers
13 distant that carry or pick up WCLF, how many is that?

14 A The number of subscribers is 29,837.

15 Q That's in central Florida?

16 A Right.

17 Q Go down to WHFT, which is in Miami, and how many--

18 A Forty-three thousand one hundred two.

19 Q Let's go to California, Concord, California, KFCB,
20 and the total number of distant subscribers there?

21 A KFCB is 132,532.

22 Q What about WCFC?

23 A Sixty-five thousand four forty-eight. Now, CFC in
24 Chicago and Concord, what you are doing with them is
25 essentially exchanging programs, right?

1 Q Ho, not that I know of.

2 A You're not carrying a program for them so that they
3 can carry your program?

4 Q I'm not familiar with that, no. I don't know that
5 for sure.

6 A Well, my understanding is that you trade programs
7 with Jerry Rose and with Ron Haus, their flagship program,
8 California Tonight, so that they will carry one of your
9 programs.

10 Q I don't know that for a fact. That may be but,
11 whatever, it's irrelevant. We do extend out beyond central
12 Florida.

13 A The point I'm trying to make is, what would be more
14 relevant is the extent of programs on those two stations. If
15 it's a once-a-week program that you're exchanging and that
16 they are carrying, that's one thing, but if you are, in fact
17 -- if they are carrying large blocks of your programs, then I
18 haven't seen any evidence of that -- it's possible. I don't
19 say it isn't, Mr. Kennedy, I just haven't seen evidence of
20 that.

21 Q Okay. You mentioned in the last proceeding at
22 transcript page 52, that the Special Nielsen Study was a
23 "six-cycle study". Would you explain to the Tribunal what a
24 six-cycle study is?

25 A Okay. The Nielsen Study, as I have looked at it

1 again, is for six reporting periods -- the four so-called big
2 books and the two so-called small books -- now, this is my
3 understanding -- and it takes all of the periods in all of
4 the USA, all of the DMAs as they're called, which are the
5 metropolitan areas that make up the television universe in
6 the United States, they look at all of those, they look at
7 all the diaries, and in those diaries they separate diaries
8 that are cable viewers.

9 So, now they've started out with the universe of
10 all diaries for all the DMAs, and basically for each rating
11 period you will have, in every market area that's measured,
12 roughly 200 diaries per week, for the month. And what that
13 totals now for the entire universe, I don't know in diaries,
14 but it's thousands and thousands and thousands of diaries, as
15 opposed to, say, a national rating sweep that essentially
16 looks at people meters, meters in homes, and they look at all
17 these diaries, and then they separate out those that are
18 viewing on cable.

19 Having done that, they then look at cable viewing
20 of distant signals versus cable viewing of local signals, and
21 they look at distant only viewing, and the stations were put
22 in the study based on those that had 80,000 or more distant
23 viewers. That's more or less my understanding of how the
24 huge universe was narrowed down to cable only distant
25 viewing.

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1 And they look at the diaries that are generated,
2 the thousands and thousands of diaries that are generated for
3 the six rating periods during the year. Some markets, as you
4 know, are not rated in what are called the small books. I
5 think the top 30 markets only are rated for the small books
6 whereas the national ratings, the so-called four big books,
7 are done for the entire country.

8 Q During each of the six individual rating periods in
9 1987, did the Nielsen Study take its samples from the same
10 119 stations?

11 A As what? The same as --

12 Q The same 119 stations that were chosen, were they
13 the same stations in January that finished up in November?

14 A If -- the only change would be -- I don't know the
15 answer to your question. My assumption would be yes, but a
16 caveat I would give is, the only way it would change is if
17 somehow the 80,000 subscribers that was the criteria cut-off
18 set by Nielsen -- actually set by the, I think, MPAA, who
19 commissioned the study for Nielsen -- if that 80,000 sub
20 changed, then it's possible that the universe of stations
21 changed from time one to time two to time three, but I don't
22 know.

23 I wouldn't think there would be substantial changes
24 unless one station was increasing dramatically in its
25 carriage on cable systems, and that's possible, but I'm not

1 aware of it.

2 Q Okay. In going through the Special Nielsen Study
3 of each of the six Settling Devotional Claimants' programs, I
4 notice that some programs appear in a couple of those ratings
5 cycles, skip a cycle or two, and then show up again, or maybe
6 in some cases not at all. Can you explain why that would
7 happen?

8 A There are a number of reasons for that, probably,
9 but to give you -- I mean, I can hypothesize why that might
10 be, but I don't really know why that is. I mean, I can't
11 tell you the exact reason.

12 One reason is, there is a change in stations, the
13 stations they are on. Another reason is that -- and I have
14 alluded to this in some of the things I have written -- there
15 is pretty good evidence, as we have gone and looked at
16 diaries, that the recall -- diary data is recall data, and
17 we've talked about this before the Tribunal before.

18 Number one, it's typically supposed to be done when
19 the person is viewing, or shortly thereafter. In actual
20 fact, most diary keepers often write down what they watched
21 if not at the end of the evening, sometimes at the end of the
22 week.

23 The net effect is that the recall is often
24 imperfect, and independent stations are often not properly
25 recalled. And there have been some studies which show that

1 when you begin to meter, put meters in the household and
2 measure actual viewing, the viewing of independent stations
3 goes up significantly.

4 The net effect of metered data, or people meters as
5 they were called, was to reduce the overall rating for
6 network programs, and the reason for that is there is, in
7 fact, a lot more viewing of independent stations going on
8 than diary data shows.

9 Now, I'm not sure if that's the direction you're
10 moving with your question.

11 Q In the transcript of your testimony last October,
12 on page 43, in speaking of the Special Nielsen Study you
13 state "It's looking at 119 of the largest stations that are
14 recarried on Form 3 systems, so it is looking at better
15 programming and making a survey based on their programming in
16 six rating periods of the year".

17 By that statement, are you saying that somehow
18 CRU's programs, or the programs of the Settling Devotional
19 Claimants, are better than ours because they appear on larger
20 stations?

21 A No, I wasn't making a statement as to the quality
22 of programming. What I was -- there is undeniably -- what I
23 was getting at there, I think -- and I haven't reread that
24 testimony -- but what I was getting at is, these are the
25 programs that are more widely syndicated and distributed

1 nationally.

2 I think that there would tend to be a correlation
3 between national exposure and quality, but I've already said
4 this morning that I think, Mr. Kennedy, in terms of my
5 awareness, you're doing some of the better programming being
6 done by local Christian stations in the country.

7 Q Now, Dr. Clark, on page 2 of your rebuttal
8 testimony, in the first sentence of paragraph 2, you make a
9 statement "The Larson data on which CTC bases its claim, does
10 not provide any basis for the Tribunal to make a time-based
11 fee generation award to the respective claimants".

12 Did you personally write that statement?

13 A No, I didn't write it, but I reviewed this entire
14 document, and made significant changes in it.

15 Q Can you explain what you meant by that, that we do
16 not provide any basis?

17 A The Larson data cannot provide a basis because the
18 Tribunal has said that time-based fee generation is not the
19 only basis for making an award. Moreover, it has been
20 established through other testimony, that there are problems
21 with the Larson data, that it's imperfect, at best, primarily
22 related to its reporting of carriage of signals as distant
23 signals.

24 Q Okay. You just got through telling me about the
25 Nielsen Study where the diaries are kept, and you have

1 indicated that that, too, is probably an imperfect study.

2 A Yes.

3 Q Further down in that same paragraph, you also
4 mention that because of some "inaccuracies" in the Larson
5 data, the Tribunal could not rely on the data to make a time-
6 based fee generation award.

7 Do you remember what those inaccuracies were?

8 A They essentially related to the fact that it's very
9 difficult, if not impossible, to establish with perfect
10 precision, if you will, the recarriage of distant signals.
11 In other words, look at a given time segment in a given
12 market where you may have Leave It To Beaver being carried as
13 a distant signal, being shown by a local station in a local
14 market, and being shown by a cable network. It could all be
15 Leave It To Beaver. The question becomes, what is distant
16 viewing and what isn't? And that kind of anomaly which, in a
17 universe of television programming, is potentially, at times
18 at least, very large, is difficult for anyone to get a handle
19 on.

20 Now, the day may come when every single television
21 household in America is metered, through one means or
22 another. At that point, it will be possible to know--
23 Heaven help us in terms of its intrusion into our lives--
24 but it will be possible to know exactly what everyone is
25 watching and -- I mean, I'm told, for example, there are even

1 devices that can sense how many people are in front of the TV
2 set -- but to get back to the point, the point I'm making is,
3 in actual fact, the universe of viewing at any given time,
4 the potential viewership in any given market, given over-the-
5 air, on cable, distant carriage and so forth, it gets fairly
6 complicated.

7 Q I guess I didn't make myself clear on my question.
8 When you mentioned the inaccuracies that was brought out from
9 the last testimony, did you recall what those inaccuracies
10 were?

11 A That I mentioned?

12 Q No. The Settling Devotional Claimants say that
13 there are inaccuracies. You mention in your testimony, down
14 towards the middle of the page, "There were grave problems in
15 the accuracies, and because of these inaccuracies the
16 Tribunal could not rely". Do you remember what the
17 inaccuracies were?

18 A Beyond just what I've said to you, no -- that
19 Larson is limited in his ability to recapture this kind of
20 data and to sort it out, and that's essentially what I'm
21 alluding to there.

22 Q So, are you saying that the stations -- that some
23 of the stations that Larson picked, were actually local
24 instead of distant?

25 A No.

1 Q Just to clear things up, that is basically what
2 happened in the testimony.

3 A I don't know how to respond to what you are saying.
4 Repeat your question, now, that Larson is saying --

5 Q When the Settling Devotional Claimants were cross-
6 examining Thomas Larson, they found some inaccuracies in his
7 report. And he had listed some of those stations -- White
8 Sulphur Springs, in particular, from WOAY -- as a distant
9 signal when, in actual fact, it was a local station.

10 And what I'm saying is -- what I was wanting to
11 lead up to -- do you know what type of systems those
12 inaccuracies were? Were they Form 3 systems? Form 2? Form
13 1?

14 A No, I don't know that.

15 Q For the record, I will tell you that those were
16 Form 1 or Form 2 systems, they were not Form 3 systems.

17 MR. GOTTFRIED: I object to that. The record will
18 show that at least one of them is a Form 3 system, and that's
19 carriage of the Santa Ana system by the Camarillo Cable
20 System, but the record will speak for itself..

21 CHAIRMAN ARGETSINGER: Are you withdrawing your
22 objection then?

23 MR. GOTTFRIED: No, I object for the record, but
24 the record will -- the record cannot be clarified in the way
25 that -- we would object to having the record clarified in the

1 way that Mr. Kennedy is suggesting.

2 MR. KENNEDY: I will show you that it does not
3 include any Form 3 systems, from the report that I got
4 November the 9th, the KTBN system that is in reference to
5 here, does not show anything less than Form 3 systems.

6 Now, if you are referring to something from the
7 August report, that might be true, but I'm talking about the
8 latest data that we have here.

9 CHAIRMAN ARGETSINGER: Mr. Kennedy, are you
10 introducing some --

11 MR. KENNEDY: Well, I've already -- CTC Rebuttal
12 Exhibit Number 10 is already part of my rebuttal testimony,
13 and it does not include any -- on KTBN they do not include
14 any systems other than Form 3, on that particular station.

15 MR. GOTTFRIED: That's my objection, whether one of
16 the stations is reported as paying Form 3 royalties is not a
17 discont signal.

18 MR. KENNEDY: Will we be getting into this tomorrow
19 when you cross-examine me then?

20 MR. GOTTFRIED: Mr. Jacobs will testify that it
21 isn't a Form 3 system.

22 MR. KENNEDY: Okay. Well, I'll get into that with
23 him later then. That's all right. I'll go on with Dr.
24 Clark's testimony, if I may.

25 BY MR. KENNEDY:

1 Q At the top of page 3 of your rebuttal testimony,
2 you mention that the systems carrying CTC's programs
3 represent a small fraction of the total universe of systems
4 which carried devotional programs in 1987.

5 Do you know how many distant systems carried In
6 Touch Ministry in 1987?

7 A No.

8 Q Do you know if it was large or small?

9 A Well, by comparison, it was certainly more than the
10 systems that carried CTC.

11 Q How do you know that?

12 A Well, I know that because it's a nationally
13 syndicated program that is carried by some of the stations
14 which are typically carried as distant signals.

15 Q The MPAA-Nielsen only shows it on three stations.
16 The Nielsen ROSP only shows it in six markets, I believe.

17 A Well, it would depend on what stations it's on,
18 whether it would generate distant carriage.

19 Q So, in the universe, would that be large or small,
20 is my question. In the universe that you're comparing CTC.

21 A The universe would be the number of cable systems
22 that are recarrying the program, and I don't know exactly
23 what that is for In Touch Ministries, but I -- my suspicion
24 would be that it would be a significant number of systems,
25 based on its carriage by major stations.

1 Q Do you have any idea how many distant subscribers
2 In Touch reaches?

3 A No, I don't.

4 Q How about any of the others? Oral Roberts?
5 Richard Roberts? Old Time Gospel Hour?

6 A No. Well, I mean, I've looked at those numbers
7 from the Nielsen Study, but short of having it in front of me
8 here -- I mean, I can't recall those for you.

9 Q I guess what I'm trying to get at is, we're trying
10 -- the statement was made earlier, let's compare apples with
11 apples, and CTC shows that we reach about a half a million
12 distant subscribers. And I was trying to figure out how many
13 distant subscribers some of the Settling Devotional Claimants
14 reach, so we picked --

15 A Well, it would be millions. I mean, it would be in
16 the millions.

17 Q But we have no proof of that.

18 A Well, the Nielsen Study details that. I mean, we
19 haven't entered that here, but it's certainly there.

20 Q Now, on page 5 of your rebuttal testimony, in the
21 center of the page, you state "CTC has shown nothing about
22 the relative value of its programs compared to those of the
23 Settling Devotional Claimants". Did you write that
24 statement?

25 A Yes.

1 Q And is that an overall general view of our case?

2 A Well, the issue of benefit or market value has been
3 established by the Tribunal on the basis of Nielsen ratings.
4 My comment there was not related to the value of the programs
5 in terms of religious programs, or even the production value
6 of the programs.

7 I was talking about the market value of those
8 programs, the market value that they are adding to the cable
9 systems and, in my judgment, CTC has not been able to show
10 relative market value in that area, but it's not a quality
11 judgment on the programs, understand that. I mean, the
12 programs could be fine programs, but you demonstrate value--
13 as the Tribunal has made it clear, the ratings are the best
14 way to demonstrate value.

15 Q In the past, you have been a critic of ratings.

16 A That's true, but what I'm saying here is that if
17 we're going to follow the Tribunal's criteria, one has to--
18 one has to follow the criteria that's been set down here, and
19 based on the criteria set by the Tribunal, the -- you know, a
20 program out there for an hour, on one station that has one
21 viewer at 3:00 a.m., doesn't have the same value as a program
22 that's on another station that has 80,000 viewers at 2:00
23 p.m. or 6:00 p.m.

24 One has to look at the relative audience that is
25 related to that, or some evidence that people are viewing,

1 and this is -- I haven't set the criteria. I think that
2 there might be a better way for the Tribunal to fix its fees,
3 but that's not the issue at question today.

4 What we are looking at today is, have you been able
5 to show value relative to all the other claimants, Devotional
6 Claimants.

7 Q Well, the answer to that, if I may answer your
8 question, is, yes, I think we have, but the Tribunal has also
9 stated that the Nielsen Study is a starting point.

10 Does it also state that it is the ending point?

11 A I can't speak for the Tribunal. All I can say is,
12 the Nielsen is an imperfect measure. It's a very coarse net
13 when it needs to be a fine net for devotional programming,
14 but my suspicion is, and I think my judgment would be, that
15 if one were to project the Nielsen -- that the Nielsen is
16 projectable, and with all its inadequacies, it's the best
17 measure we have.

18 Q Okay. May I remind you of Federal Register 54-
19 16146, and on page 1 of our rebuttal -- I will read that for
20 you.

21 MR. GOTTFRIED: I'm going to object. I mean, I've
22 given Mr. Kennedy a lot of leeway. None of this has anything
23 to do with Dr. Clark's rebuttal testimony, and it's
24 inappropriate cross-examination.

25 MR. KENNEDY: I don't think it's inappropriate at

1 all. He's talking about the Nielsen Study. He's talking
2 about basing everything on the Nielsen, and the Tribunal has
3 made it clear that they don't base their decision strictly on
4 the Nielsen Study.

5 CHAIRMAN ARGETSINGER: Well, Mr. Kennedy, I think
6 where the objection is coming from is you are getting a
7 little bit into your rebuttal. So, if you can tailor it more
8 to cross-examining Dr. Clark on his testimony --

9 MR. KENNEDY: All right.

10 BY MR. KENNEDY:

11 Q The 700 Club in the Special Nielsen Study, was
12 carried by 21 distant stations. With the exception of your
13 own CBU affiliate, KXTX, how many of those stations did not
14 send CBU an invoice for air time charges?

15 A Did not send?

16 Q Did not send.

17 A I don't know.

18 Q Were there any of them that carried that program
19 for free?

20 A There may have been, but I don't know.

21 Q How about PTL? Did any of the 13 stations carry it
22 for free?

23 A Again, I don't know. I mean, it would be unlikely,
24 Mr. Kennedy, that they would be carrying the program for
25 free, but it is possible, therefore, I couldn't rule it out.

1 Short of examining each station and going out and doing some
2 sort of historical digging, I really couldn't answer that
3 question.

4 Q On page 7, paragraph 2 of your rebuttal testimony,
5 you state "If CTC's total fee generation is modified, as we
6 believe is proper, to deduct fees attributable to carriage of
7 WCLF by the Lakeland, Florida cable system, fees that cable
8 system was unwilling to pay" -- are you aware that that cable
9 system paid fees for WCLF in 1987?

10 A Yes, but my understanding was they agreed to do so
11 only if they were remitted by CTC.

12 Q That was a contract that was provided for by Group
13 W. Group W sold to Paragon, and there was no contract with
14 Paragon.

15 A Uh-huh. So, the fees were not paid, and what was
16 the result of not paying those fees, may I ask?

17 Q Nothing, in 1987.

18 A Uh-huh. But ultimately resulted in the station
19 being dropped, didn't it?

20 Q But it has nothing to do with 1987.

21 A Right.

22 Q You used an analogy in your testimony of WXXX and
23 KYYY. Let's pretend that CBN is a store, a department store.
24 You used the analogy also of a bouquet of flowers. This is a
25 good time of year to go shopping.

1 So, here we have this nice department store called
2 CBN, and people go into CBN and they see things, and they buy
3 things on occasion, however, business is not as good as it
4 needs to be. So, CBN is going to put an ad in the paper, and
5 it says "After Thanksgiving Sale, 50 percent off of
6 everything", and suddenly more people seem to be aware of
7 CBN. So, there it is.

8 Now, I want to ask you a question. Does CBN have a
9 promotions department?

10 A Oh, definitely.

11 Q As the former head of the CBN Marketing Department,
12 was it important to you to promote your product?

13 A Definitely. Certainly.

14 Q Why?

15 A To increase audience.

16 Q What else?

17 A Well, that's the primary reason, to increase
18 audience. A promotion that's designed to increase audience
19 and doesn't increase audience is not a good promotion, but--
20 so, I think that would be the primary reason.

21 Q If there were no promotion spots for any of CBN's
22 programming, what would the likely outcome be?

23 A I think that promotion spots help to increase
24 audience. That is not to say you wouldn't have any audience
25 without promotion, but certainly promotion can help to

1 increase the audience.

2 Q Dr. Clark, on page 12 of your rebuttal testimony,
3 you use a mythical station WXXX to illustrate that CTC does
4 not suffer harm from our inability to do promotion of our
5 product through direct mailing, yet you have just indicated
6 that without promotion CBN's product could have possibly been
7 harmed.

8 A I was alluding to on-air promotion. We don't do
9 promotion through the mail. Beyond people who call us and
10 want to be part of our -- request to get our mailings, we do
11 not, as a ministry, promote the ministry programs just in
12 general mailings.

13 Q As a witness for all the Settling Devotional
14 Claimants, does that hold true for them all?

15 A I don't know. I am not aware of anyone who does
16 what I might call general mailings, I think I indicated that
17 earlier, but it is entirely possible you do, and it would be
18 a good promotional strategy.

19 I think the best promotional strategy for TV has
20 generally been proven to be on-air promotion. That's the
21 single best one, but certainly mail could be a useful
22 strategy as well. We just don't -- we can't afford to do it.

23 Q You also mentioned that if we had required a
24 license or agreement, we would then know who was carrying our
25 programs. What are we to do with those stations and cable

1 systems that are filling their program lineup with CTC's
2 programmings or CBN's program, that don't bother to inquire
3 if they have permission?

4 A Well, in our case, we rigorously try to determine
5 who those were, and certain stations, like low-power
6 stations, are not given permission to pick up our programming
7 unless we reach some sort of a barter agreement with them.

8 So, our policy has been to consistently try and
9 discover if this is happening, but if you are asking my
10 opinion, Mr. Kennedy, what I would say is that you should
11 simply have an understanding in the industry that these
12 people need to write you a letter notifying you of their
13 carriage, and let that be widely known so that you have some
14 written evidence to substantiate the fact that they're
15 carrying you. I think that's in your best interest as your
16 network expands.

17 Q Okay. Let's return to the subject of the MPAA-
18 Nielsen Study. Since you are the survey expert, maybe you
19 can enlighten us. I was puzzled by the six-cycle rating
20 period. For example, Old Time Gospel Hour shows up eight
21 different times in February, May, July and November, but we
22 have no idea what happened to it in January or October.

23 A The explanation for that is probably this. The so-
24 called small books are only the top markets, and it's
25 possible, though unlikely, that for some reason it didn't

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1 show up in those smaller books. I don't know. I can't
2 explain that. I need to do a little more digging.

3 Q You mentioned October, the last time you were here,
4 that in 1987 the PTL was "steadily being dropped" while you
5 were there. Does the Special Nielsen Survey seem to concur
6 with your statement since PTL doesn't show up in 92.3 percent
7 of the six cycles?

8 A Yes, it would seem to concur with that. I might
9 say that when I was involved with PTL -- as you know, as I've
10 testified, I was a federal bankruptcy trustee -- I was not
11 involved as I was in CBM, in the syndication of the program.

12
13 And PTL was in a process of decreasing stations,
14 but during the period I was there, fewer than ten stations
15 were actually dropped, and that would be November of '87, the
16 seven months I was there, into '88, and they were for the
17 most part, with the exception of -- well, even that was -- I
18 was going to say a Los Angeles station -- they were small
19 stations. They were not major stations.

20 I think that the fall-off of the syndication of PTL
21 Network to stations, most of that occurred shortly after it
22 went into bankruptcy, under Reverend Falwell.

23 Q Twelve of the 21 stations that carried the 700 Club
24 all six cycles. Regarding the remaining nine stations, some
25 did not appear in the Nielsen Study after July, some don't

1 show up in the Nielsen report on devotional programs, but
2 they do show up quite frequently in the Settling Devotional
3 Claimants' rebuttal Exhibit R-5. For example, WWOR and WYTV
4 from Ohio, are two of the several stations that follow this
5 scenario.

6 Do you know if WWOR or WYTV was dropped from--
7 dropped the 700 Club?

8 A WWOR did drop the 700 Club when they changed
9 ownership and dropped all devotional programming.

10 Q And when did that happen?

11 A I'm not sure of the exact month, but it was in '87,
12 I believe. It may have been in '86, but I think it was in
13 '87. There was a change of ownership and they moved to New
14 Jersey and whatnot and, as a policy, dropped devotional
15 programming. The other station in Indiana, was it?

16 Q That's WYTV, Youngstown, Ohio.

17 A I don't know the story on that station.

18 Q You and several others, including the Tribunal,
19 have been critical of the MPAA-Nielsen Study in the past.
20 What are your thoughts on the Tribunal's statement that says
21 -- I'm quoting from 54 FR 16154 -- "the basic criticism
22 advanced by critics of the Nielsen Study is that for small
23 claimants it can be capricious"?

24 A I guess I would allude to a comment I made earlier
25 which is, it is a net, but it could be a finer net. The

1 problem with any research like this is, to increase the
2 accuracy and the reliability involves such horrendous costs
3 that there is a trade-off between the actual cost and the
4 ability to increase precision for small stations, versus the
5 actual cost of doing the study.

6 Q So, what is a small station supposed to do,
7 without?

8 A Well, I think that you have to establish, through
9 fee generation, through ratings, and any other way you can,
10 that you're being -- number one, you're being recarried;
11 number two, that you represent a portion of the devotional
12 claimants, and I think in that sense, you're proceeding along
13 that line but, basically, I think that the more widespread
14 your programming can become, the more it can be recarried,
15 the better off you will be long-term.

16 Q And in order to do that, basically, what you are
17 saying is is what you said, that 80 percent of your
18 programming is paid, you have to pay for it to be on
19 different stations. So, would we then, in turn, have to pay
20 larger stations that are involved in the MPAA-Nielsen, before
21 we could become a part of it? Is that correct?

22 A The stations that are mostly recarried, as you
23 know, are commercial stations. Most of those stations would
24 require for their time, some source of revenue. As you know,
25 they traditionally derive revenue by selling spot

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1 advertising, and I guess other than either paying them for
2 the time, the only other option would be, to you or any other
3 devotional claimant, would be to open up spot holes within
4 the program for spot commercials.

5 Q Does the 700 Club do that?

6 A No, we don't. And for the most part, with few
7 exceptions, most devotional claimants choose not to do that,
8 the reason being, there is a feeling -- and I think soundly
9 based -- that whoever advertises on the program is going to
10 have some comments on the content, and most devotional
11 programs, as you well know, are of the kind where the content
12 is sacrosanct, literally, that there is a feeling that what
13 goes on there is inspired by the Lord and based on the word
14 of God. And, therefore, to insert into that kind of a format
15 commercial activity, would not be appropriate.

16 Though in the past, just as a test, we have tested
17 that possibility -- not over-the-air but with an audience
18 and, strangely enough, the response to the commercials was
19 quite positive. Nevertheless, we do not do that, would not
20 do that, and -- there are some programs, though, maybe of a
21 strictly musical nature, that might conceivably work in a
22 commercial format, that might be one possibility, or even a
23 children's program conceivably, a devotional children's
24 program, could be sponsored.

25 Now, when you say do we do that, I'm thinking one

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1 exception is Super Book, Flying House and Another Life. They
2 were commercial programs. They were sponsored commercially,
3 and are sponsored commercially, but not the 700 Club.

4 Q I have one last question. Regarding licensing
5 agreement of programs, if WCLF-TV contacted CBN and said "Pat
6 Robertson, we like your program so much we want to put it on-
7 the-air for free", what would CBN then do?

8 A We'd probably write you a letter saying what are
9 your plans? What time will you carry it? What time will you
10 air it? And we'd be delighted to grant you that privilege.

11 Q Okay. So, a licensing agreement does not
12 necessarily involve money, is that correct?

13 A That's right. It is permission, essentially,
14 that's critical, or notification.

15 MR. KENNEDY: You have clarified some questions for
16 me. That's all the questions I have. Thank you.

17 CHAIRMAN ARGETSINGER: Thank you, Dr. Clark, for
18 that very wide-ranging testimony. Do you have any redirect?

19 MR. GOTTFERTED: No redirect.

20 CHAIRMAN ARGETSINGER: Thank you.

21 (Whereupon, the witness was excused.)

22 MR. GOTTFERTED: We call as our next witness
23 Christina Holdenbauer.

24 CHAIRMAN ARGETSINGER: Welcome to the Tribunal, Ms.
25 Holdenbauer.

1 Whereupon,

2 CHRISTINA MOLDENHAUER

3 was called as a witness and, having first been duly sworn,
4 was examined and testified as follows:

5 MR. GOTTFRIED: Ms. Moldenhauer is our Marsha
6 Kessler. That won't mean anything, but --

7 CHAIRMAN ARGETSINGER: Well, we certainly like the
8 nice red, bright apparel that Ms. Kessler normally favors.

9 DIRECT EXAMINATION

10 BY MR. GOTTFRIED:

11 Q Can you state your name for the record, please.

12 A Christina Moldenhauer.

13 Q And what is your occupation?

14 A I'm a legal assistant at Fisher, Wayland, Cooper
15 and Leader.

16 Q I think what you're here to testify to, Ms.
17 Moldenhauer, is the preparation of what has been marked as
18 Exhibits 5, 6, 7, 8 and 9, is that correct?

19 A Right.

20 Q And you did those exhibits at my instruction?

21 A Yes, I did.

22 Q Why don't we start with Exhibit Number 5. Rather
23 than go through chronologically on how this was done, let's
24 do the -- we'll start on Exhibit 5 and we'll go down the
25 columns.

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1 The first column on that Exhibit R-5 is a list of
2 stations and their locations.

3 CHAIRMAN ARGETSINGER: Mr. Gottfried, are you going
4 to offer the witness for voir dire?

5 MR. GOTTFRIED: Oh, I'm sorry. Yes, I will.

6 CHAIRMAN ARGETSINGER: Mr. Kennedy?

7 VOIR DIRE

8 BY MR. KENNEDY:

9 Q How long have you been a legal assistant?

10 A Six months -- five months.

11 Q Have you worked for any other law firms?

12 A Yes, I have.

13 Q What were they?

14 A I worked for two attorneys in Fairfax, Jean Lynch
15 and Sharon Philapor (phonetic).

16 Q And what are the duties of a legal assistant?

17 A Oh, God, everything. I couldn't begin to tell you
18 everything that I do. When an attorney needs something done
19 -- for example, research in this case -- you do that. We do
20 things at the FCC, and we get licenses.

21 Q Are you studying law yourself?

22 A I plan to.

23 Q Have you put together the exhibits or testified for
24 any other previous CRT proceedings?

25 A No, I have not.

1 Q Did you write your testimony yourself?

2 A No, I didn't.

3 Q Who wrote that for you?

4 A Mr. Gottfried -- but I did review it. He wrote it
5 on the basis of everything that I did.

6 Q Are you personally responsible for the preparation
7 of rebuttal Exhibits R-5 through R-9?

8 A Yes, I am.

9 Q And were those done also under the direction of Mr.
10 Gottfried?

11 A Yes, they were.

12 Q Did he review those?

13 A Yes.

14 Q Has your law firm used Cable Data Corporation in
15 the past?

16 A I don't know. I'm not sure.

17 Q Have you prepared exhibits or data information
18 reports, using the Larson data information?

19 A Other than this one?

20 Q Other than that one.

21 A No.

22 MR. KENNEDY: That's all the voir dire questions I
23 have.

24 CHAIRMAN ARGETSINGER: Mr. Gottfried?

25 MR. GOTTFRIED: I would offer Ms. Moldenhauer as a

1 witness on the exhibits proffered.

2 REDIRECT EXAMINATION (Resumed)

3 BY MR. GOTTFRIED:

4 Q The first column, the Stations and the Locations,
5 where did that information come from?

6 A We asked PTL, CBN and Old Timers, to give us a list
7 of the stations that their programs were aired on.

8 Q And this is a combined list?

9 A Yes.

10 Q I think you were here for Dr. Clark's testimony
11 this morning. There was a question about, for example, WWOR
12 being listed in '87-2.

13 A Right.

14 Q Why is that in there?

15 A We asked them if they were on at all during that
16 time, to give us that station. And I guess at sometime
17 during that part, they were on.

18 Q And is it your understanding -- and I think this
19 will come out in cross -- that a cable system is required to
20 pay for any signal it carries distant at anytime during that
21 period?

22 A Right.

23 Q So, this would have the stations on which any
24 program of those three producers appears?

25 A Right.

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1 Q But it doesn't include Oral Roberts or Stanley?

2 A Right.

3 Q That's In Touch. The next column is the Program
4 Hours Per Week on each of those stations. Where does that
5 come from?

6 A That came also from PTL, CBN and Old Timers, and
7 they sent me a list that said, for example, a show was on
8 8:30 to 9:30, Monday through Friday, and then I figured out
9 that was five hours per week.

10 Q And this is an addition of all three programs?

11 A Right.

12 Q And all of their programs, Super Book and programs
13 like that also?

14 A Right, everything.

15 Q And that's the second column, and then there's a
16 similar column on '87-2, is that right?

17 A Right.

18 MR. KENNEDY: Excuse me, could I ask a
19 clarification. Did you say that the program hours per week
20 includes programming other than CBN, PTL and Old Time Gospel
21 Hour?

22 MR. GOTTFRIED: No, no. All their programs, such
23 as Super Book and -- no, no other -- well, why don't you
24 answer that.

25 THE WITNESS: Right. They sent me -- and I don't

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1 know the names of the individual programs, all of them, but
2 they sent me a list with all the stations and the programs,
3 and then it would say, like I said, 8:30 to 9:30, Monday
4 through Friday, or one hour a week, or --

5 MR. KENNEDY: But this list of program hours per
6 week indicates on your exhibit, CBN, PTL and Old Time Gospel
7 Hour.

8 THE WITNESS: Right.

9 MR. KENNEDY: This does not include any other
10 programs, is that correct?

11 THE WITNESS: Right.

12 MR. GOTTFRIED: It includes programs produced by
13 CBN, such as Super Book, but it doesn't include Oral Roberts.

14 THE WITNESS: Right. I'm getting confused. Isn't
15 Super Book part of --

16 MR. GOTTFRIED: CBN produces programs other than
17 the 700 Club. It produces Super Book --

18 THE WITNESS: Everything of CBN, PTL --

19 MR. KENNEDY: Oh, I see. Oh, CBN-produced -- okay.

20 THE WITNESS: All of their programs.

21 BY MR. GOTTFRIED:

22 Q Now, the next column, Overall Station Hours Per
23 Week, where did that information -- I notice a lot of them
24 are listed as 168 hours. What is the significance of 168
25 hours?

1 A That means 24 hours a day, seven days a week, and
2 that equals 168.

3 Q Why is that number given?

4 A Because we based it on per week station hours--
5 how many hours per week a program was on.

6 Q And the theory was that this could only favor CTC,
7 isn't that right?

8 A Oh, right. A hundred and sixty-eight is the most
9 conservative for us, for our figures.

10 Q So, if it turns out that, for example -- well,
11 let's look here. We didn't check whether KAAL in Austin,
12 Minnesota was actually on 168 hours, is that right? Did you
13 check to see whether it was on 24 hours a day, seven days a
14 week?

15 A No.

16 Q But assuming it was on, say, only 130 hours, then
17 the next number would be greater than 3 percent, is that
18 right?

19 A Right.

20 Q And then the station fees generated would be
21 higher?

22 A Right.

23 Q And our fees generated would be higher?

24 A No, the station --

25 Q Oh, the station fees generated would be the same.

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1 A -- fees would stay the same, but the next one would
2 --

3 Q So, when you say this was the most conservative
4 estimate, is that what you're referring to?

5 A Yes.

6 Q Now, some of them aren't 168 hours.

7 A Right.

8 Q For example, Mitchell, South Dakota, KVLTV, 129.5
9 hours. Where did that come from?

10 A I used a book called the Religious Broadcasting
11 Directory, and within that they list several stations, and it
12 says how many hours a week they are actually on-the-air.
13 There were eight stations, I believe, from their exhibit,
14 that I actually called the stations and asked them how many
15 hours a week they were on. That's in Exhibit R-6. Those
16 were the ones I called to make sure.

17 Q Those were the eight stations that CTC had listed
18 --

19 A Right.

20 Q -- on its exhibit?

21 A Right.

22 Q Was it eight?

23 A No.

24 Q Twelve?

25 A Right.

1 Q And you called each of those and asked them how
2 many hours a week?

3 A Right.

4 Q And you used that for CTC's exhibit as well as for
5 this exhibit?

6 A Right.

7 Q Now, the next column says Percent Programs, and
8 that's just the first two numbers, one divided by the other,
9 is that right?

10 A And you did that, or the computer did?

11 A The computer did it.

12 Q And then the next column, Station Fees Generated,
13 where does that come from?

14 A That's from a Larson report. We asked them to do
15 the same thing for these stations as they had done previously
16 for CTC.

17 Q And Mr. Cassler's question I think you were here
18 for -- this is total fees generated?

19 A Right.

20 Q And you used the same number when you did CTC's?

21 A Right.

22 Q And then the last column, the Fees Generated,
23 that's --

24 A It comes from the percentage multiplied by the
25 station fees generated.

1 Q And the Totals, to turn to the last page of that
2 exhibit, were what?

3 A For the first part of the year, \$707,762.24, and
4 the second half is \$765,604.67.

5 Q Do you know what the total of the fee is?

6 A You have it somewhere.

7 Q Is that on page 2 of your testimony?

8 A I believe so. Right. On page 2, \$1,473,366.90.

9 Q Now, turning to Exhibit Number 6, did you prepare
10 this exhibit also?

11 A Yes, I did.

12 Q And this -- again, the first column -- well,
13 really, it's the first two columns, there's a repetition
14 there.

15 A Right.

16 Q Where did those stations come from?

17 A That came from CTC's exhibit -- and I'm not sure of
18 the number -- Exhibit Number 6.

19 Q From their direct case?

20 A From the direct case.

21 Q And you didn't change that list at all, did you?

22 A No, I didn't.

23 Q Now, the next column, CTC Program Hours Per Week?

24 A I used Exhibit 12. I used their Exhibit 12, also
25 from the direct case. That shows you -- well, I guess you

1 can't see it -- but they do the same thing. For example, one
2 was on Saturday, 10:00 to 10:30. That's .5 hour.

3 Q And on your Exhibit 7, rebuttal Exhibit Number R-7,
4 Settling Devotional Claimants, does that show --

5 A Right. That shows how I got the totals. I used
6 their exhibit and added them all up.

7 Q And they didn't have such a total on their exhibit,
8 total hours?

9 A Right.

10 Q So, we generated this, and that was essentially to
11 check to make sure that the percentage was accurate, of total
12 programs?

13 A Right.

14 Q The next column, Overall Station Hours Per Week,
15 where did that information come from? We're back now on
16 Exhibit Number R-6.

17 A That came from the stations. These were the ones
18 where I called every station, just to make sure that we had
19 the right number.

20 Q And the next column then, is the percent of CTC's
21 program on each of those?

22 A Right.

23 Q And that's just column three divided by column two?

24 A Right, the program hours per week and the station
25 hours.

1 Q And is that the same as what they had come up with?

2 A No, some of the numbers were different, and I think
3 that's because --

4 Q Well, for example, the first one, KFCB. They said
5 it was 5 percent of the week, and we got it as 4 percent.

6 A Right.

7 Q You don't know why that was different?

8 A I could take a guess that the station hours weren't
9 right, the weekly, but I don't know.

10 Q Based on the information from Mr. Kennedy's own
11 case as well as the information from the stations, you
12 believe the 4 percent to be accurate?

13 A Right, because those were the numbers from the
14 stations themselves.

15 Q The next column, Station Fees Generated, where did
16 that come from?

17 A That came from the Larson report also.

18 Q The Larson report that you had used to prepare --

19 A That I used for my other exhibit, right, Exhibit R-
20 5.

21 Q So, insofar as new information had been added
22 between the time that the original CTC study had been done
23 and the numbers we got, CTC was given credit for those
24 increases, is that right?

25 A Correct.

1 Q And then the last column is Fees Generated, and how
2 is that generated?

3 A That's taking the percentage of the CTC programs
4 into their overall station fees generated.

5 Q And the total at the bottom of that column?

6 A Is \$13,073.55.

7 Q Now, I believe you calculated what percentage that
8 \$13,073.55 was of the total generated by both the Settling
9 Parties and CTC, is that correct?

10 A Right, and that's .88 percent.

11 Q That's 0.88 percent?

12 A Right.

13 Q And then -- I guess we've gone over this several
14 times. I told you there was something different or peculiar
15 about the Lakeland carriage, but we didn't discuss -- of
16 WCLF, is that right?

17 A That's right.

18 Q So, you just did a different mechanical
19 calculations, taking that figure out?

20 A Right.

21 Q Let's just go through what's on rebuttal Exhibit
22 Number R-8 because I think we can -- may have to clarify.

23 The Fees Generated by WCLF in line 1 are \$33,483,
24 and that comes from Larson?

25 A Right.

1 Q And then the second line says Fees Generated by
2 Lakeland carriage of CLF, and that's \$31,191, and that also
3 comes from Larson, is that right?

4 A Yes.

5 Q So, if you take it out, you're left with the number
6 on line 3, \$2,292, is that right?

7 A Right.

8 Q And then the next line multiplies that by 25
9 percent, and then if we go back to Exhibit R-6, we see 25
10 percent of the time was CTC's programs?

11 A Right.

12 Q So, if we wanted to do a fee generation without
13 Lakeland, it would be \$573 instead of \$8,370.75, looking back
14 on --

15 A Right.

16 Q The last column on R-6 shows CLF as \$8,370.75?

17 A Right, and the \$573 would replace that number.

18 Q And how does that affect the total, the \$13,073.55
19 total?

20 A It reduces it to \$5,275.80.

21 COMMISSIONER AGUERO: \$5,000?

22 THE WITNESS: Right. \$5,275.80.

23 BY MR. GOTTFRED:

24 Q And that's line 6, on R-8.

25 MR. KENNEDY: Excuse me -- how did you achieve that

1 number? That's \$8,000 -- you did what now?

2 MR. GOTTFRIED: Do you want to explain it again?

3 THE WITNESS: This is the one I had a hard time
4 with. This is the one that Mr. Gottfried helped me with a
5 lot.

6 We took -- number one is the total fees generated
7 by WCLF, and that came from Larson.

8 MR. KENNEDY: Yes, I understand everything all the
9 way down to the \$13,073, item 5.

10 THE WITNESS: Okay. That came from the total from
11 my Exhibit R-6. That was one I calculated. I did roughly
12 the same exhibit that you had done in the direct case, and
13 that was the number that I had gotten.

14 MR. KENNEDY: And the \$5,275, where does that come
15 from?

16 MR. GOTTFRIED: That's the new total, right,
17 without --

18 THE WITNESS: Oh, right, that's when you use -- I'm
19 sorry. Back to R-6. When you have -- on WCLF, where the CTC
20 fees generated were \$8,370, it now becomes \$573, item 4 on R-
21 8, and your new total is \$5,275.80.

22 BY MR. GOTTFRIED:

23 Q What you're trying to do is show what the fees
24 would have been, total fees generated without counting
25 Lakeland carriage of WCLF, is that right?

1 A That's right.

2 Q You count carriage of WCLF by systems other than
3 Lakeland.

4 A Right, and you get \$13,073 --

5 Q No, for systems --

6 COMMISSIONER AGUERO: From \$8,370.75 you drop to
7 \$573?

8 THE WITNESS: Right.

9 COMMISSIONER AGUERO: How do you do that?

10 THE WITNESS: Because right here you'll see --

11 MR. GOTTFRIED: No, R-8.

12 THE WITNESS: Oh, I was thinking about R-6. The 25
13 percent -- CLF -- 25 percent of all of WCLF is CTC --

14 COMMISSIONER AGUERO: What exhibit is that?

15 THE WITNESS: I'm sorry -- R-6.

16 CHAIRMAN ARGETSINGER: All right. In R-6 you have
17 --

18 THE WITNESS: WCLF --

19 COMMISSIONER AGUERO: WCLF Lakeland, yes, for
20 \$8,370.75.

21 THE WITNESS: Right, but if you go two columns
22 over, you'll see that CTC programs made up 25 percent. Now,
23 if you go to Exhibit R-8, you'll see that in number 4, if you
24 use the 25 percent and you multiply it by \$2,292, which is
25 subtracting numbers one and two, you'll get \$573.

1 MR. GOTTFRIED: Of the \$33,000 generated by CLF,
2 roughly \$33, \$31 were by carriage in Lakeland. Almost all of
3 it was by carriage by the Lakeland system. So, it reduces
4 the \$8,000 number drastically. It looks like it goes down
5 more than you would expect because most of the carriage was
6 by that one system.

7 I think there are exhibits in our direct case that
8 show that. It's roughly 90 percent of the carriage of the
9 CTC-owned station, WCLF, was by the Lakeland system.

10 THE WITNESS: What I probably should have done is,
11 done another one just like Exhibit R-6. We're trying to show
12 it with Lakeland and without Lakeland.

13 BY MR. GOTTFRIED:

14 Q And the two numbers that you get, again, are -- and
15 then did you redo a total, a percentage of CTC over the whole
16 universe?

17 A Right, and then --

18 Q And what did that come to with Lakeland out?

19 A Without Lakeland, it became 0.36 percent.

20 Q And with Lakeland?

21 A 0.88 percent.

22 Q Now, Exhibit Number 9, that completed your study of
23 the relative value, didn't it?

24 A That's right.

25 Q Or the relative fee generation?

1 A Right. We asked Larson to send us a list of 3.75
2 royalties, and I just -- I picked five stations, and they
3 happened to be the five largest in our report, and that's
4 where that came from.

5 Q The first column there that lists the stations, you
6 selected those?

7 A From my -- the first exhibit, R-5, I just chose the
8 ones that had generated the most fees.

9 Q And you asked Larson to give you what?

10 A A list of the 3.75 royalties, as they had done
11 earlier with the total fees.

12 Q And that would be column 4?

13 A Right. And then I did the same thing as I did in
14 the other ones, the program hours per week and the station
15 hours per week.

16 Q And all of these came to 168?

17 A That's right.

18 Q You used the 168?

19 A Right.

20 Q You don't know whether some of these stations might
21 have had fewer hours on?

22 A I'm 99 percent sure that they were all 24 hour
23 stations.

24 Q That's because they are large stations?

25 A Right.

1 Q And the numbers that you would achieve using this
2 time-based 3.75 royalties generated were what?

3 A Oh, for the first part, it's \$146,369.46, and for
4 the second part it is \$173,939.16.

5 Q And you say you reviewed rebuttal Exhibit Number R-
6 4, R-5, R-6, R-7, R-8 and R-9, 5 through 9 you prepared and 4
7 you reviewed?

8 A That's right.

9 Q And do these exhibits accurately state your
10 testimony to this Tribunal?

11 A Yes, they do.

12 Q And the last page of Exhibit 4, is that your
13 signature on that declaration?

14 A Yes, it is.

15 MR. GOTTFRIED: I would move that these exhibits be
16 entered in evidence.

17 CHAIRMAN ARGETSINGER: Without objection --MR.
18 KENNEDY: I have no objection.

19 (Whereupon, the Settling
20 Devotional Claimants' Exhibits
21 were received in evidence)

22 MR. GOTTFRIED: I have nothing further.

23 MR. KENNEDY: My cross-examination of Ms.
24 Moldenhauer will be quite lengthy. So, do you think we need
25 to take a break now and come back and start fresh, or should

1 we continue?

2 CHAIRMAN ARGETSINGER: When you say quite lengthy,
3 do you mean more than 45 minutes?

4 MR. KENNEDY: Yes.

5 CHAIRMAN ARGETSINGER: If we gave you a break right
6 now, would you be ready to proceed with the cross?

7 MR. KENNEDY: I'm ready to proceed with cross right
8 now, it's just going to be lengthy, and I didn't know if you
9 wanted to break for lunch now and come back after lunch --

10 CHAIRMAN ARGETSINGER: We're going to take a five-
11 minute break.

12 (Whereupon, a short recess was taken.)

13 CHAIRMAN ARGETSINGER: Mr. Kennedy?

14 CROSS-EXAMINATION

15 BY MR. KENNEDY:

16 Q Ms. Moldenhauer, I've read and examined your
17 testimony and the accompanying exhibits. When did you begin
18 gathering this information to prepare these exhibits?

19 A Probably three weeks before they were due, and I
20 don't remember the due date, but I had about two or three
21 weeks.

22 Q You mention at the bottom of the first page of your
23 testimony, that the information about the number of program
24 hours per week for CBN, PTL and Old Time Gospel Hour, you
25 obtained from a "responsible" person with each of these

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1 claimants. Do you know who those responsible people were?

2 A No, I don't.

3 Q You don't know what position they held?

4 A No, I don't.

5 Q How do you know they were responsible?

6 A I don't know. I would just assume that they would
7 find someone who knew the answers to that, to send me the
8 information. I mean, it was a printed out sheet that looked
9 like a programming type sheet.

10 Q Okay. And, so, basically you got a program
11 schedule, is that what you mean?

12 A Right.

13 Q Okay. And what information did you ask these
14 people to give you when you called?

15 A I didn't make the actual call to do that, so I
16 don't know what the actual words --

17 Q Did someone in your office make that call?

18 A Yes. Yes.

19 Q Your Rebuttal Exhibit R-5 does not include what
20 kinds of distant systems were used. Can you tell me?

21 A No, I can't. I don't know.

22 Q You don't know if it was Form 3 systems only? Form
23 1, 2 or 3?

24 A I'm sorry, I don't know that.

25 Q Okay. At the top part of page 2 of your testimony,

1 you say that "In a few cases where we had no information
2 about a station's program week, we made the assumption that
3 these stations operated 168 hours per week". Who is "we"?

4 A Mr. Gottfried and myself.

5 Q Okay. Did you also make that same assumption when
6 preparing Exhibit 6, which lists the stations carrying CTC
7 programming?

8 A I'm sorry, I need to look at Exhibit 6. No, for
9 these I called the stations.

10 Q You actually called?

11 A Right, for those.

12 Q Okay. You say in some cases you called the station
13 directly. What did you ask them?

14 A How many hours a week they were on-the-air?

15 Q Any other questions other than that?

16 A No.

17 Q Did you ask if any other stations in question
18 signed off early during the week, for maintenance of
19 equipment?

20 A No, but the ones -- for example, in Exhibit 6,
21 WHFT, which is 164 hours -- they did sign off Sunday morning
22 for a few hours. So, in that case, they specifically said
23 that, but I didn't ask for maintenance.

24 Q Okay. Let's talk about Exhibit R-5. From 1987-1
25 to 1987-2, I notice there were occasional gaps where

1 information might show up on one side but not on the other.
2 Can you explain this?

3 A That means that they weren't on-the-air during that
4 period.

5 Q Okay. So, KDNL of St. Louis, for example, which
6 aired 10 hours a week in 1987-1 and disappeared in 1987-2,
7 they dropped off in hours of programming?

8 A Not KDNL, but KDLT right above it?

9 Q No -- maybe you're right -- yes, KDLT, 10 hours.

10 A Right. It was never was on-the-air during the
11 second part of the year.

12 Q Do you know what happened to it?

13 A No, I don't.

14 Q You don't know if it dropped the stations or --

15 A I don't know.

16 Q Okay. I also notice that KFCB, Concord,
17 California, was on the list, and it shows they aired eight
18 hours of Settling Devotional Claimant programming per week.

19 A That's right.

20 Q Do you know if that included all three of those
21 programs -- CRH, PTH, and Old Time Gospel Hour?

22 A Yes, the total of eight is all three.

23 Q Okay. The reason I'm asking, in most cases where I
24 researched and tried to discover who the program was that was
25 on that station, but for that particular station I could not

1 find any evidence of any of those programs being on-the-air.

2 A I had that in the programming reports. I don't
3 know off-hand which ones they were.

4 Q But it's in the program schedule?

5 A Right.

6 Q Okay. If you would flip over a couple of pages to
7 WGTR in Detroit, in 1987-1 you show them airing 24 hours a
8 week.

9 A Right.

10 Q My research books show all three claimants on this
11 station. Can you tell me what happened in 1987-2?

12 A I don't know what happened during that period. All
13 I know is that -- no, I don't know.

14 Q Okay. There's a lot of gaps in here. It's kind of
15 odd that a station that had as many as 24 hours of
16 programming per week would suddenly drop, that's why I'm
17 asking these questions.

18 A You know what -- I'm sorry -- I need to change
19 something. Those were stations where there were no fees
20 generated. That's what it was. I'm sorry.

21 For example, the first part of the year, if there
22 is a gap there, there were no fees generated.

23 Q Even though they generated fees in the first part
24 of the year? Normally, the fees went up in '87-2.

25 A I know, and that was under the advisement of

1 somebody -- there were no fees generated, so they said just
2 eliminate the whole column. And I don't know off-hand how
3 many program hours per week they were on.

4 Q And who authorized the dropping of that particular
5 --

6 A Mr. Harrington.

7 Q Okay. Flip over another couple of pages to WUAB-
8 TV, Lorain, Ohio, which I believe is Cleveland. Would you
9 tell us how many program hours per week were attributed to
10 PTL and Old Time Gospel Hour?

11 A I'm sorry, I don't understand -- you mean, without
12 CRN?

13 Q My books show that it was only PTL and Old Time
14 Gospel Hour that were on that particular station.

15 A I did all three and added them together. There
16 could have been a zero added into this, but off-hand I don't
17 know.

18 Q So, there's a total of six there?

19 A Right, for all three of them.

20 Q Okay. And in '87-2 that dropped down to --A to one.

21 Q Okay. The MPAA-Nielsen study shows that PTL was on
22 WUAB in January and February, but not in May, July, October
23 or November, and Old Time Gospel Hour appears in the MPAA-
24 Nielsen only through July.

25 Why should the Tribunal give the Settling

1 Devotional Claimants full credit for fees generated on
2 programs that did not appear during the full accounting
3 period?

4 A I'm not qualified to answer a question like that.
5 I'm sorry. I just did the data for it.

6 Q Well, who would I ask that?

7 A Mr. Gottfried. That's where I got -- you know, he
8 guided me through this.

9 Q Okay. If you will flip back over to WHMB-TV,
10 Indianapolis. Your Exhibit R-5 shows 19 hours of Settling
11 Devotional Claimant programs airing in both 1987-1 and 1987-2
12 and, as you said before, that includes all three claimants?

13 A Right.

14 Q I could find no evidence that any of those aired on
15 that station.

16 A All of the information that I have on here actually
17 came from the station, and that was in those programming
18 reports.

19 Q So, we have no way of finding out whether or not
20 that is accurate information?

21 A You could contact the station, I guess. I don't
22 know. I got this from the information I got from the
23 station.

24 Q Okay. Now please turn to the last page of Exhibit
25 Number 5 and look at WWOR. Dr. Clark has made a point to

1 emphasize that the 700 Club's presence on WOR, and we note in
2 '87-2 that the 700 Club's share of WOR's programming
3 generated \$343,000 in fees.

4 Now, Ms. Moldenhauer, when you put together this
5 information for '87-1 and '87-2, did you inquire if the
6 programs which aired in '87-1 actually continued to air all
7 the way through '87-2?

8 A I'm sorry?

9 Q If the 700 Club aired on WOR in '87-1, did it
10 continue to air --

11 A I don't know exactly -- the 700 Club -- I don't
12 know the individual programs.

13 Q Okay. That was the only program that was on WOR.

14 A Okay. I don't know. I mean, I would have to have
15 memorized every station. I did all of these and all of the
16 individual programs.

17 Q So, Dr. Clark, in his testimony, stated that it was
18 dropped by WOR. If they did not, in fact, air either during
19 the full 1987-1 or 1987-2 accounting periods, should the fees
20 generated be modified to give a more accurate total?

21 MR. GOTTFRIED: That's been asked and answered. I
22 object to the question. The witness isn't competent to
23 answer, and it's just not an appropriate question.

24 MR. KENNEDY: I think it's appropriate. You're
25 willing to modify WCLF's fees just on a cable system's

1 "unwillingness to pay fees", but they did pay the fee.

2 MR. GOTTFRIED: I'm not arguing with -- Mr. Kennedy
3 can argue anything he wants in findings and conclusions, but
4 just talking about questions to this witness.

5 CHAIRMAN ARGETSINGER: Objection overruled.

6 MR. GOTTFRIED: You can answer.

7 THE WITNESS: I don't know. I'm not qualified to
8 answer that. Like I said, I got the information from the
9 stations. I made a computer program, and this is what I got.

10 CHAIRMAN ARGETSINGER: So, this five hours, that is
11 information you got from the station?

12 THE WITNESS: From the station, right.

13 MR. GOTTFRIED: From the station, or from the
14 producer?

15 THE WITNESS: Oh, was it the producer? From the
16 producers. The programming reports that I got, that's where
17 these numbers come from.

18 CHAIRMAN ARGETSINGER: From the programming
19 reports?

20 THE WITNESS: Yes.

21 CHAIRMAN ARGETSINGER: And then you put them on
22 this chart?

23 THE WITNESS: Right, but as for deciphering them
24 and explaining them, I'm just not qualified to do that.

25 CHAIRMAN ARGETSINGER: Where did you get this

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1 number five?

2 THE WITNESS: They come from the programming
3 reports -- from PTL, CBN and Old Timers, I had three separate
4 lists of the programs and how many hours per week they were
5 on -- for example, 8:30 to 9:30, Monday through Friday -- and
6 with that, I added up all together CBN, PTL and Old Timers,
7 and that's where this number comes from. I don't know if
8 this five hours is the CBN program, or Old Timers, or --

9 COMMISSIONER AGUERO: To my knowledge, WOR-TV in
10 New York, channel 9, carried only one devotional program,
11 CBN, no?

12 MR. GOTTFRIED: I think that's correct.

13 COMMISSIONER AGUERO: And this number, the
14 \$9,973,990 of the \$11,442,635 -- those numbers, where did
15 they come from?

16 MR. GOTTFRIED: That's from Larson.

17 THE WITNESS: That's from Larson.

18 COMMISSIONER AGUERO: From Larson.

19 MR. GOTTFRIED: That's the same number -- that's
20 how we got a parallel to CTC's case. The fees generated are
21 from Larson.

22 CHAIRMAN ARGETSINGER: And then, of course, you get
23 your percentage by the number of hours that you're on?

24 THE WITNESS: Right.

25 CHAIRMAN ARGETSINGER: So, there's some question

1 here as to how many hours were you on, and that's what we're
2 trying to resolve?

3 MR. GOTTFRIED: Right.

4 THE WITNESS: So, five. Someone was on WWOR five
5 hours; as to which one it was, I don't know off-hand.

6 COMMISSIONER AGUIERO: What month of the year did
7 WOF drop the CRN program, do you have any idea?

8 MR. GOTTFRIED: I don't know. Just so the record
9 is clear, and I think we counted anything that was on for any
10 time during that rating period because a cable system is not
11 allowed to pro-rate its fee payment. If it carried the
12 system for one day during that period, it pays the whole fee.

13 Now, in the Nielsen report, that's taken care of
14 because it drops out by periods. We're looking at fees
15 generated, though. If the CRN Club was on one day during
16 that period, the cable system would not be allowed to pro-
17 rate its fee. And that's a ruling of the Copyright Office,
18 and that will be presented to the Tribunal for judicial
19 notice during Mr. Kennedy's cross-examination.

20 CHAIRMAN ARGETSINGER: Mr. Kennedy?

21 BY MR. KENNEDY:

22 Q Okay. Let's examine Exhibit R-6 now. In several
23 instances, your figures representing overall weekly station
24 hours differ from my figures. Where did you get this
25 information?

1 A From the station itself. I called the station.

2 Q And you also mentioned earlier that you used a
3 broadcasting directory?

4 A Right. It's called the Religious Broadcasting
5 Directory.

6 Q Okay. And do you know what year that was?

7 A I think it was 1989, but I'm not sure. They only
8 had one book.

9 Q Why would you use 1989 for 1987 information?

10 A Because we couldn't find -- nobody had information
11 on how many hours a week -- we couldn't find that information
12 anywhere. I called all over, and someone suggested to go try
13 to find this book, and NAB library had it.

14 Q So, you took 1989 information and used it for 1987
15 data?

16 A Right.

17 Q Okay. And when that information was not available,
18 you called?

19 A Right. No. For these, I called; if not, we left
20 it at 168.

21 Q And on page 2 of your testimony, you state that "it
22 is extremely likely that these stations operated for fewer
23 than 168 hours", when you were talking about Exhibit R-5?

24 A Right.

25 Q Did you make that same assumption for Exhibit R-6?

1 A I'm sorry, I don't --

2 Q Okay. On page 2 --

3 A I didn't make any assumptions for R-6 because I
4 called everybody.

5 Q Okay.

6 A These come directly from the stations, in R-6.

7 Q And that's what they told you?

8 A Right. The information I have there came from the
9 stations.

10 Q Do you know who you talked to at the station?

11 A I might have it in my office somewhere, the names
12 of the people.

13 Q Did you ask for a certain department?

14 A No. When I called, I said I need to find out
15 information on how many hours a week you are on the air.
16 They would say hold on, and then someone came on who knew
17 about that.

18 Q And did you ask specifically for 1987?

19 A No, I didn't.

20 Q Is it true that this Exhibit R-6 is a recomputation
21 of CTC's direct case Exhibit Number 6?

22 A Yes, it is.

23 Q And what cable systems does this exhibit include?
24 Does it include all Form 3s, or all cable systems?

25 A I don't know.

1 Q CTC Exhibit Number 6 was only Form 3 systems.

2 A I don't know. I used the stations that they had on
3 there, and then my information for the program hours per
4 week, and the station hours, and then the fees generated came
5 from the Larson report.

6 Q Okay. On page 3 of your testimony, you indicate
7 that you increased the total fees generated by systems
8 carrying CTC's programs, is that correct?

9 A Right.

10 Q Thank you. Appreciate that. We need all the help
11 we can get.

12 When was this cable data study done?

13 A This one, the one --

14 Q The cable data study done by Tom Larson, that you
15 took the information from?

16 A Oh. I guess that was done the three weeks before
17 this was due.

18 Q So, it's very recent?

19 A Right. Right.

20 Q Item number 2 on page 3 of your testimony, you say
21 you changed the percentage of CTC programs on various
22 stations. Can you explain that for us, please? Page 3 of
23 your testimony.

24 A Right. That would be because the station hours per
25 week had changed, where I had the more exact figures, so I

1 did the program hours per week, and then the station hours,
2 and then you get a percentage. You divide and you get a
3 percentage.

4 Q Now, let's turn to Exhibit R-7 for just a moment,
5 and clear up an item or two here. Now, you said in your
6 testimony that you took the data from CTC direct case Exhibit
7 Number 12, to recalculate the CTC program hours?

8 A Right.

9 Q Do you have CTC program Exhibit Number 12 there?

10 A Yes.

11 Q Let's start with Joy Junction. I agree with your
12 figures for the most part, except for WKOI and WTJC. I
13 notice you don't have anything there.

14 A Right. We have no information on either one.

15 Q That was CTC Exhibit 12 for Joy Junction was
16 amended and is part of the record, on transcript page 78.

17 A All I have is this, and it doesn't have anything on
18 it.

19 Q So, there's a couple of errors right there.

20 Now, look at Action Sixties. You have CTC Amended
21 Exhibit 12?

22 A Right.

23 Q On your rebuttal Exhibit Number R-7, you show WCFC
24 carrying Action Sixties only one hour per week. Would you
25 compare that figure with CTC's Exhibit 12?

1 A I'm sorry, there's an error there -- it should have
2 been five.

3 Q So now we have another error. While you're still
4 on Action Sixties, look at WTJC. How many hours per week are
5 they carrying that program?

6 A That should be five also.

7 Q And you had down?

8 A One.

9 Q On your Exhibit R-7, how many hours do you show
10 Action Sixties being carried by WTJC?

11 A One.

12 Q And how many is it actually carried?

13 A That's five also.

14 Q Now we're adding another four hours to WCFC and
15 four hours to WTJC.

16 Okay. Let's move over to the Totals column and
17 make some corrections. Would you total WCFC's line, please,
18 and tell me what you get now?

19 A Seven.

20 Q So that's changed to seven.

21 A Right.

22 Q Now total WTJC's line, please.

23 A That becomes six.

24 Q Six plus -- we had -- for Joy Junction, we had a
25 half-hour. WKOI has a half-hour there also.

1 A Okay. I'm sorry. Seven.

2 Q I believe it should be 6.5. Action Sixties should
3 be five hours, Joy Junction should be .5, and you total all
4 of those together --

5 A You also have the Downings.

6 Q Okay. That's .5, and Solo Act is .5.

7 A Okay.

8 Q Now, go up to WKOI, and we need to add a .5 under
9 Joy Junction.

10 A Right, then that becomes two hours.

11 Q Now, with these corrections, we are ready to go
12 back to your Exhibit Number 6. Look at the column labeled
13 Overall Station Hours. You show KTBW on-the-air 168 hours
14 per week, and you got that information from the station
15 itself?

16 A Right.

17 Q You did not ask the stations if they signed off for
18 equipment maintenance?

19 A No.

20 Q Okay. I called KTBW and KTBW and all the TBN
21 stations. Their chief engineer tells me that they sign off
22 on every one of their stations four hours a week.

23 A Well, on KTBW I have that as 164 hours a week.

24 Q Okay. Now, the information that I received from
25 the station manager, Phil Mulberry, did you talk to him?

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1 A I don't know who I spoke with.

2 Q So that drops down from 168 hours per week to 164,
3 for all the TBN stations except KTBO, which is correct at
4 162.

5 Okay. Look at that same column at WCFC. Did you
6 know that they sign off also for eight hours a week to
7 maintain equipment?

8 A All I know is the information I got when I called.

9 Q So now that changes to 160 hours. What about WKOI
10 and WPCB? They also sign off each week to maintain
11 equipment. WKOI signs off four hours a week and WPCB signs
12 off eight hours a week, so you have another 164 and another
13 160.

14 Now, with these errors corrected, what does that do
15 to the CTC program percent column?

16 A It would increase them --

17 Q That's correct.

18 A -- but I don't know by how much.

19 Q And if those figures are then corrected, what
20 happens to the CTC fees generated column?

21 A They increase also.

22 MR. KENNEDY: Mr. Chairman, I would like to submit
23 a corrected version of this exhibit, which I will request to
24 be marked for identification as CTC Rebuttal Cross-
25 Examination Exhibit Number RX-1.

1 CHATMAN ARGETSINGER: Without objection, it will
2 be so entered.

3 (Whereupon, the document was
4 marked for identification as
5 CTC Exhibit No. RX-1)

6 BY MR. KENNEDY:

7 Q Do you have that document in front of you now?

8 A Yes, I do.

9 Q Would you look at this document and note the
10 corrections highlighted in yellow. With these 17
11 corrections, what has happened to the total?

12 A It's increased.

13 Q Now, please turn back in your exhibit to the last
14 page of your R-5, and note that you have indicated that the
15 700 Club generated fees of \$343,530.80 on WWOR in 1987-2
16 when, in actuality, there is no indication -- as a matter of
17 fact, it was even told by Dr. Clark that was dropped --

18 MR. GOTTFRIED: Objection, no foundation,
19 inaccurate portrayal of the testimony. The record speaks for
20 itself. I strenuously object to that question. It's a
21 misinterpretation of the record.

22 BY MR. KENNEDY:

23 Q However, if you point out -- if we deduct the five
24 months the 700 Club was not on WWOR in 1987, you'll get a new
25 fee generation total --

1 MR. GOTTFRIED: May I have a ruling on my
2 objection, please?

3 CHAIRMAN ARGETSINGER: I thought you were going to
4 speak to the objection.

5 MR. KENNEDY: The objection, to me, is unfounded.
6 They are taking the same information, willing to deduct WCLF
7 for a cable system that went ahead and paid the fees anyway
8 -- because the cable system might have been -- didn't want to
9 pay the fees, but they went ahead and paid them, but they are
10 willing to deduct that from us.

11 MR. GOTTFRIED: If Mr. Kennedy wants to prepare
12 another exhibit based on a proration, we can have an argument
13 about whether proration is proper, but I will not let --

14 MR. KENNEDY: I will present that this afternoon.

15 MR. GOTTFRIED: This exhibit, as I've told the
16 Tribunal, is based on no proration because the Copyright
17 Office has held that if a signal is carried for even one day
18 during a period, then the cable system has to pay as if it
19 carried it for 182 and a half days. It doesn't matter if it
20 was one day or 181 days.

21 That may be a problem with fee generation all
22 together. That may be a reason why the Tribunal doesn't want
23 to use fee generation, but if it's going to use fee
24 generation, then we submit that that's the way to do it. The
25 system carried it for that day, it paid for the whole period.

1 If Mr. Kennedy wants to do something different,
2 he's welcome to do that.

3 CHAIRMAN ARGETSINGER: Would you repeat the end of
4 that question? What was it you asked this witness?

5 MR. GOTTFRIED: Maybe we could have the question
6 read back.

7 MR. KENNEDY: That would help. I don't remember.

8 (Whereupon, the Reporter read back the question as
9 requested.)

10 CHAIRMAN ARGETSINGER: What was the question?

11 MR. KENNEDY: I don't think I asked a question.

12 MR. GOTTFRIED: The objection was that it was not
13 carried in '87-2.

14 CHAIRMAN ARGETSINGER: Well, perhaps if you finish
15 the rest of your question, it would be helpful. The question
16 is counsel's comment, which is not evidence, but the question
17 hasn't been asked.

18 MR. KENNEDY: Well, I was going to get that it
19 would generate a new -- if we did deduct the -- at least five
20 months of that fee generated on WWOR for the last part of
21 1987-2, then we could get a new fee generation total. Our
22 increase on the fees generated jumped from \$13,000 to \$15,300
23 --

24 CHAIRMAN ARGETSINGER: Is this a question to the
25 witness, or are you arguing the motion?

1 MR. KENNEDY: I was going to ask the witness what
2 would that increase be.

3 CHAIRMAN ARGETSINGER: Which increase? Your
4 increase?

5 MR. KENNEDY: Well, she mentioned that there was a
6 percentage, .088 percent --

7 CHAIRMAN ARGETSINGER: Perhaps you should say as a
8 hypothetical -- I can see a way around here, if you want to
9 say, if you drop this amount, how would our percentages
10 change, and that might finish the discussion.

11 BY MR. KENNEDY:

12 Q If you drop this amount, how would those
13 percentages change?

14 A They would increase.

15 MR. KENNEDY: That's all the questions I have.

16 CHAIRMAN ARGETSINGER: Mr. Gottfried?

17 REDIRECT EXAMINATION

18 BY MR. GOTTFRIED:

19 Q Let me, just to clarify the record -- we've been
20 going through and dropping four hours for maintenance, is
21 that right?

22 A Yes.

23 Q Do you know how many of the stations on Exhibit
24 Number 5 do maintenance every week?

25 A I have no idea.

1 Q For all we know, 98 percent of those stations do
2 maintenance for four hours a week, don't we?

3 A That's right.

4 Q So, if we wanted to get an exact comparison, we
5 would have to go through and call every one of those
6 stations, wouldn't we?

7 A That's right.

8 Q But what we're trying to do here is give the
9 Tribunal some kind of comparative figures, isn't that right?

10 A Right.

11 Q And this is the first time they've been given those
12 figures. Mr. Kennedy never gave them comparisons with the
13 Settling Devotional Claimants, did he?

14 A Not as far as I know.

15 MR. GOTTFERT: I have nothing further.

16 CHAIRMAN ARGETSTINGER: Well, I think that will
17 conclude the testimony from this witness, and we will have
18 two more witnesses. Thank you very much.

19 (Whereupon, the witness was excused.)

20 We'll come back at 2:15.

21 (Whereupon, at 12:55 p.m., the luncheon recess was
22 taken.)

23

24

25

AFTERNOON SESSION

(2:15 p.m.)

1

2

CHAIRMAN ARGETSINGER: Mr. Guillot, are you ready?

3

MR. GUILLOT: Yes, Mr. Chairman, we are ready.

4

We would like to call as our first witness Mr.

5

Bruce Jacobs.

6

CHAIRMAN ARGETSINGER: Mr. Jacobs.

7

Whereupon,

8

BRUCE JACOBS

9

was called as a witness and, having first been duly sworn,

10

was examined and testified as follows:

11

CHAIRMAN ARGETSINGER: Welcome to the Tribunal.

12

DIRECT EXAMINATION

13

BY MR. GUILLOT:

14

CHAIRMAN ARGETSINGER: Mr. Guillot, are you ready?

15

MR. GUILLOT: Yes, Mr. Chairman, we are ready.

16

We would like to call as our first witness Mr.

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Bruce Jacobs.

18

CHAIRMAN ARGETSINGER: Mr. Jacobs.

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Whereupon,

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CHAIRMAN ARGETSINGER: Welcome to the Tribunal.

24

DIRECT EXAMINATION

25

BY MR. GUILLOT:

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1 Q Mr. Jacobs, could you, please, for the record tell
2 us your full name and where you live?

3 A Bruce David Jacobs, I live in Washington, D. C. at
4 3908 McKinley Street, Northwest.

5 Q And what is your current occupation?

6 A I am an attorney, communications attorney.

7 Q How long have you been an attorney?

8 A Roughly 10 years.

9 Q And in what state, or states are you licensed to
10 practice?

11 A In Maryland and the District of Columbia.

12 Q And what is your current position?

13 A I am a partner at Fisher, Wayland, Cooper and
14 leader.

15 Q And how long have you been with that firm?

16 A About seven years.

17 Q What did you do prior to that, briefly?

18 A I spent a few years with a public interest group
19 doing communications work.

20 Q Could you tell us a little bit about your
21 educational background? Where did you attend undergraduate
22 school?

23 A I went to college at Rutgers in New Jersey, and New
24 College at the University of South Florida, where I got my
25 degree.

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1 Q And what year did you get your degree?

2 A 1976.

3 Q And what law school did you attend?

4 A I went to Georgetown and Harvard, I got my degree
5 from Harvard in 1980.

6 Q Has your practice focused on any particular of law?

7 A A fairly wide range of communication issues with
8 some specialization in cable and broadcast and the interface
9 between the two.

10 Q Could you describe for us briefly the nature of
11 your cable and copyright experiences?

12 A Well, I do a fair amount of giving advice to both
13 cable operators and broadcasters on the kinds of issues that
14 are the subject of my testimony, in particular whether or not
15 the carriage of a particular broadcast signal by a particular
16 cable system will require the payment of what copyright
17 royalties.

18 Q Has this experience included the preparation and
19 filing of Statements of Account at all on behalf of cable
20 companies?

21 A Some, although it tends to be more advising on
22 particular aspects of filling out a particular Statement of
23 Account, rather than actually doing the whole thing myself.

24 Q In terms of giving advice regarding the filling out
25 of such statements though, about how many Statements of

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1 Account, roughly, would you say that you have given advice
2 regarding the preparation of?

3 A I would say dozens.

4 Q And have you ever participated in helping a cable
5 system decide whether a particular signal would be local, or
6 distant, under the rules?

7 A Oh, frequently, that's the principal issue. There
8 are various other issues that come up occasionally, but it is
9 mostly a matter of the extent to which a signal is local or
10 distant, because that has so much impact on the royalties
11 that are being paid.

12 Q And where do you learn these types of things? Are
13 there any recognized textbooks in the field, or --

14 A There are, Nemer is one textbook that I refer to
15 and I work with staff at the FCC and the Copyright Office in
16 some of the finer points.

17 Q Could you explain, briefly, for the Tribunal the
18 relevance that a determination regarding whether a particular
19 signal carried is a local or distant has for a cable system?

20 A Well, the copyright royalties that are paid are, at
21 least in part, determined by whether or not the signal is
22 local, or distant.

23 Q And as an advisor, what considerations are relevant
24 in rendering such a determination?

25 A The principal consideration is the FCC's old "must

1 carry" rules. The FCC rules which were in effect at the time
2 that the Copyright Act was passed mandated the carriage of
3 certain broadcast signals. And to the extent that those
4 signals were mandatory, or they were "must carry" in the
5 vernacular, there was no additional copyright royalty
6 required to be paid for the carriage of those signals. So
7 that when you try to determine whether a signal is local, or
8 distant, you look at whether it was a "must carry" under the
9 old copyright rules.

10 MR. GUILLOT: Mr. Chairman, at this time the
11 Settling Devotional Claimants would like to offer Mr. Jacobs
12 as an expert with respect to determinations regarding whether
13 a particular signal is distant, or local within the meaning
14 of the Copyright Act and the rules of the Federal
15 Communications Commission. And we would tender the witness
16 for voir dire on his qualifications as such.

17 CHAIRMAN ARGETSINGER: Mr. Kennedy?

18 MR. KENNEDY: I have no voir dire.

19 CHAIRMAN ARGETSINGER: Mr. Guillot, go ahead.

20 Mr. Jacobs, if you could address the panel here, so
21 we could hear a little bit better.

22 THE WITNESS: Oh, sure.

23 CHAIRMAN ARGETSINGER: Thank you.

24 THE WITNESS: I tend to mumble a bit, sorry.

25 MR. GUILLOT: Could we have an affirmative

1 acknowledgement that he has been accepted as an expert with
2 respect to those determinations?

3 CHAIRMAN ARGETSINGER: Without objection, he has
4 been accepted.

5 MR. GUILLOT: Thank you.

6 BY MR. GUILLOT:

7 Q Mr. Jacobs, have you had occasion to review any of
8 the materials presented as part of CTC's direct case
9 testimony in this proceeding?

10 A Yes, in response to a request from Mr. Gottfried I
11 looked at certain parts of Mr. Larson's direct case
12 testimony.

13 Q And what prompted you to undertake this review?

14 A Well, Mr. Gottfried asked me to take a look at
15 those -- at a few particular circumstances, to determine
16 whether or not signals were distant or local, so that I could
17 present testimony on those issues.

18 Q Now, following your review of that aspect of Mr.
19 Larson's testimony, what did you find?

20 A Well, in all three cases that I looked at, I found
21 that the signals were, in fact, local signals.

22 Q I would like to briefly go over your findings with
23 respect to the signals that you did review, but let me ask
24 you a preliminary question. Did you review all of the
25 signals covered by Larson's study?

1 A No, I just reviewed actually two signals and their
2 carriage on three cable systems.

3 Q And which signals and cable systems were those that
4 you reviewed?

5 A WOAY in Oak Hill, West Virginia and its carriage in
6 White Sulphur Springs and Peterstown, West Virginia Cable
7 System. And KTBN, Santa Ana and its carriage on the
8 Camarillo Cable System, Camarillo, California.

9 Q Let's start with WOAY, if we could, which was cited
10 in the Larson Study as being carried on the White Sulphur
11 Springs and Peterstown Systems, as you say. What was your
12 conclusion with respect to the White Sulphur Springs carriage
13 of WOAY?

14 A Well, again, what I did was I looked at the old FCC
15 "must carry" rules, and under those rules signals were
16 considered to be a "must carry" signal if they were
17 significantly viewed in the county in which the cable system
18 was located -- significantly viewed being a term of art that
19 means a certain level of viewership according to Arbitron
20 studies in nine cable households in that county.

21 The FCC taking that as an indication that you could get the
22 signal off-the-air in that county.

23 And what I did was, I looked at Exhibit -- what I
24 presented as Exhibit R-11, which is a map that includes
25 Greenbrier County, and it shows White Sulphur Springs to be

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1 located in Greenbriar County. I then looked at a list of
2 significantly viewed signals broken down by state and then by
3 county, and that is Exhibit R-12. And that shows that WOAY,
4 Oak Hill, is listed as significantly viewed in Greenbriar
5 County.

6 Q And that would render it a local signal?

7 A Exactly. So that meant that it was a "must carry"
8 signal under the cable rules and, therefore, a local signal
9 under the copyright law.

10 Q And what was your conclusion with respect to the
11 Peterstown carriage of WOAY?

12 A Again, my conclusion was that it was a local signal
13 and by reference to a different FCC rule, this is the one
14 that says -- the FCC rule that says that cable systems are
15 required to carry the signal of any station that is licensed
16 to a community within that cable system's hyphenated market.
17 Hyphenated markets are -- there are a number of them, but in
18 this case Bluefield, which is -- Peterstown is within the
19 Bluefield market, it is within 35-miles of Bluefield.

20 Q And how did you determine that?

21 A It is on the exhibit -- if you look at a map,
22 Peterstown is within 35-miles of Bluefield. And there is a
23 Bluefield-Oak Hill-Beckley market, and I determined that by
24 looking at Exhibit -- well, at the list that I presented as
25 Exhibit R-13. And that's the Arbitron list of television

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1 markets and it shows Bluefield, Oak Hill and Beckley. So
2 that, basically, means that any cable system that is within
3 35-miles of either Bluefield, Oak Hill, or Beckley is
4 required to carry any television station that is licensed in
5 Bluefield, Oak Hill, or Beckley. Since WOAY is licensed to
6 Oak Hill, it is a "must carry" signal for Peterstown, since
7 Peterstown is within the Bluefield market.

8 So, again, it is a "must carry" and, therefore, a
9 local signal.

10 Q With respect to KTCN, what was your conclusion
11 regarding its carriage by the Camarillo Cable System?

12 A Again, the conclusion was it was a local signal.
13 The FCC rule again was different, in this case it was a rule
14 that -- it is a rule that required carriage of any signal
15 licensed to another smaller market that puts a Grade B
16 contour over that particular cable system. KTCN is licensed
17 to Santa Ana, which is a smaller market, it is not one of the
18 Top 100 markets. And I looked at what has been marked, I
19 guess, as Exhibit R-14, or presented as Exhibit R-14, which
20 shows the Grade B contours of television stations in Southern
21 California. And determined that the Grade B contour covered
22 Camarillo. A Grade B contour is an indication of the
23 strength of the signal. If a home falls within the Grade B
24 contour there is a better than even chance that viewers can
25 receive that signal. That's what the Grade B contour means.

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1 So it meant, essentially, that the viewers in
2 Camarillo could pick up KTVB and, therefore, according to the
3 FCC's rules, since KTVB was licensed to another smaller
4 market, it was a "must carry" signal. And, therefore again, a
5 local signal.

6 Q Thank you.

7 I would like to direct your attention briefly to
8 what have been marked Exhibits R-10 through R-14 for
9 identification, Rebuttal Exhibits R-10 through R-14.

10 A (Perusing documents)

11 Q Have you seen all of these before?

12 A Yes.

13 Q Do these exhibits constitute an accurate summary or
14 embodiment of the testimony that you have given before the
15 Tribunal today?

16 A I believe so.

17 Q And is that your signature on the last page of
18 Exhibit R-10?

19 A It is.

20 MR. GUILLOT: Mr. Chairman, at this time we would
21 like to offer and introduce into evidence Rebuttal Exhibits
22 R-10 through R-14.

23 CHAIRMAN ARGETSINGER: They will be entered,
24 subject to no objection.

25 (Whereupon, the document was

1 marked for identification as
2 Settling Devotional Claimants'
3 Rebuttal Exhibits Nos. R-19
4 through R-14, respectively, and
5 received in evidence)

6 MR. GUILLOT: I do have one more question for the
7 witness.

8 BY MR. GUILLOT:

9 Q I would like to show you a page from the Larson
10 Study that is already in evidence in this proceeding, if I
11 may, with respect to the carriage of KTBN.

12 MR. GUILLOT: Let me show this to Mr. Kennedy
13 first. (Handing document) That is from your direct case.
14 And I believe --

15 MR. KENNEDY: Do you know what exhibit it is from
16 the direct case?

17 MR. GUILLOT: I am not sure what the exhibit number
18 is.

19 MR. KENNEDY: Fourteen, I think.

20 BY MR. GUILLOT:

21 Q I would like to show you this with respect to the
22 Camarillo carriage, and I wanted to ask you if you can tell
23 from this data whether the Camarillo System was a Form 3 or a
24 Form 1, 2 system for the year 1987?

25 A (Perusing document)

1 Q If you can tell?

2 A It is pretty clearly a Form 3 system, because of
3 the number of subscribers and the amount of the royalties--
4 the amount of receipts and royalties. It appears to be a
5 Form 3 system. Form 1 and 2 systems have on the order of
6 1,000 subscribers and the Camarillo system has 10,000
7 subscribers and the receipts for the year 19 -- I assume this
8 is for the year, it might be for the accounting period -- are
9 on the order of -- they are roughly \$800,000.00 or more. So
10 that is clearly a Form 3 system.

11 Q So we could conclude then that there are mistakes
12 in the Larson Study with respect to the determination of Form
13 3 versus other systems, with respect to Form 3 systems?

14 A Could you be more specific?

15 Q In other words -- all right, this is a Form 3
16 system, the Camarillo System.

17 MR. GUILLOT: Thank you very much.

18 We have no further questions for Mr. Jacobs.

19 CHAIRMAN ARGETSINGER: Mr. Kennedy?

20 CROSS-EXAMINATION

21 BY MR. KENNEDY:

22 Q Have you seen the updated version of CTC's cable
23 data from the Larson Report, dated November the 9th, 1989?

24 A I don't believe so.

25 Q Let me show it to you. (Handing document)

1 A I believe all I have seen is the transcript of the
2 direct case of the testimony.

3 Q All right. Do you see KTBN?

4 This is a cable readout of distant systems done by
5 Thomas Larson, November the 9th. Would you check and see if
6 the Camarillo System is on there?

7 A (Perusing document) I am not familiar with the
8 formatting, but off-hand I don't see it, on the first page at
9 least. It appears the only cities that are on it are Ojai
10 and then there are some San Bernardino communities.

11 Q So you see no errors in that particular -- on that
12 particular station?

13 A Well, it is hard for me to know -- I just looked at
14 Camarillo, and I don't think it is possible that Camarillo is
15 in San Bernardino, or in Ojai, but I don't know. I am just
16 not familiar enough with the exhibit to know its ins and
17 outs.

18 Q Thank you. You mentioned that the FCC's cable
19 carriage rules had changed for "must carry", when did that
20 take place?

21 A Well, the "must carry" rules were ruled
22 unconstitutional in -- I would have to guess, in the mid-
23 1980s. And yet they are still the required reference for
24 determining whether or not a signal was distant or local.

25 Q Even though they are no longer in effect?

1 A Exactly. They are no longer in effect for
2 determining whether or not a cable system has to carry a
3 signal, but they are still what everybody has to refer to in
4 determining whether or not a signal is local, or distant for
5 copyright purposes, because the Copyright Act incorporated
6 them in 1976, incorporated the existing cable rules. And
7 that's what everybody has to use -- all lawyers in town who
8 deal with this have very well marked up old copies of the
9 1981 rules, or whatever, because you have to keep referring
10 back to those rules, and nobody bothers to print them up
11 anymore, because they are not in use anymore.

12 Q You mentioned on page 2 of your statement "major
13 markets and smaller markets", can you define what a "major
14 market" is and what a "smaller market" is?

15 A Yes. The FCC has a list of the Top 100 Markets
16 that is published in FCC's rules, I think it is 76-51, and
17 those are the Top 100 markets by definition of the FCC's
18 rules, again, the major markets are the Top 100 and anything
19 below the Top 100 are considered smaller markets.

20 Q And you also mentioned "significantly viewed"
21 stations?

22 A Yes.

23 Q What is a "significantly viewed" station?

24 A Again, that's defined in the FCC's rules in Part
25 76. The definition varies from network affiliates to

1 independents, in the case of independents you have to show a
2 -- it is basically a 2 percent share and a 5 percent net
3 weekly viewing in non-cable households in the county. And
4 there are various relatively arcane rules for how you show
5 that and what periods of time you have to take those numbers
6 from. But, in essence, it is -- for independent stations it
7 is a showing that some threshold number of viewers in that
8 particular county who don't have cable have been watching
9 this station. And that's taken to be an indication that, in
10 fact, the signal is readily available over-the-air within
11 that county.

12 Q Okay. I would like to show you CTC Exhibit--
13 Rebuttal Exhibit No. 10 once again. (Handing document)

14 A (Pernsing document)

15 Q This time we will turn to WOAY. Keep in mind this
16 is updated and was included in the rebuttal exhibit that
17 everyone got. Would you see if you can see the Bluefield,
18 Beckley, or Peterstown system on there?

19 A (Pernsing document) It looks to be -- it looks
20 like there are two systems that are referred to, the
21 Armstrong Utility System in Hamlin, and the Cable Systems USA
22 in Peterstown.

23 Q Okay, is that the one in question?

24 A I would assume so, I can't imagine that there is
25 more than one cable system in Peterstown, but I have never

1 seen anything that indicates anything more than was indicated
2 in the testimony that Mr. Larson gave in which the question
3 was asked about the Peterstown system, and there wasn't any
4 further identification.

5 Q There was no more than one station?

6 A No, no, in his testimony there was an issue as to
7 the Peterstown, West Virginia cable system, and it didn't
8 mention who owned it.

9 Q Do you know for sure if this is the one they were
10 talking about?

11 A No, I don't.

12 MR. KENNEDY: No more questions. Thank you.

13 CHAIRMAN ARGETSINGER: Thank you very much.

14 MR. GUILLOT: Mr. Chairman, I do have just one more
15 question to ask the witness, if that is okay.

16 REDIRECT EXAMINATION

17 BY MR. GUILLOT:

18 Q Mr. Jacobs, could we conclude then that given the
19 Camarillo situation, which you testified about today, that
20 the Larson Report does falsely report as distant at least one
21 station carried on a Form 3 cable system?

22 A I don't have any question that to the extent that
23 the Larson Report indicated that Camarillo was carrying KTBN
24 as a local -- rather as a distant signal, that it was
25 misstating the case that KTBN is a local signal, as far as

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1 carriage on the Camarillo, California System.

2 MR. GUTTLOT: Thank you very much.

3 We have no further questions.

4 CHAIRMAN ARGETSTINGER: Thank you, Mr. Jacobs.

5 (Whereupon, the witness was excused)

6 MR. GUTTLOT: At this time, Mr. Chairman, we would
7 like to call Ms. Ann Ford.

8 CHAIRMAN ARGETSTINGER: Ms. Ford, it is nice to see
9 you again.

10 THE WITNESS: Very nice to be here.
11 Whereupon,

12 ANN K. FORD

13 was called as a witness and, having first been duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GUTTLOT:

17 Q Ms. Ford, could you please state your full name and
18 address for the record?

19 A My name is Ann Katherine Ford, and my address is
20 4800 Chevy Chase Drive, Chevy Chase, Maryland.

21 Q And what is your occupation, Ms. Ford?

22 A I am an attorney, a partner with the law firm of
23 Fisher, Wayland, Cooper, Leader, and I specialize in the area
24 of intellectual property and communications.

25 Q And how long have you been with Fisher, Wayland?

1 A I have been with Fisher-Wayland since the fall of
2 1980.

3 Q And in what state are you licensed to practice?

4 A I am licensed to practice in the District of
5 Columbia and the State of New York.

6 Q Could you tell us a little bit about your
7 education, starting with your undergraduate studies?

8 A I received an undergraduate degree from Georgetown
9 University in political science and English, and attended
10 Case Western Reserve University Law School in Ohio my first
11 year, and then transferred to Duke University Law School
12 where I received my JD, law degree.

13 Q Now, you stated that your practice focuses
14 predominately on copyright, intellectual property areas?

15 A Yes.

16 Q Could you describe for us the nature of your
17 experience in the field?

18 A I have been counseling clients since joining
19 Fisher-Wayland on all aspects of copyright, whether it be
20 representing them before this Tribunal, the Copyright Office
21 in rulemaking proceedings, on potential infringement claims
22 in litigation and infringement claims, basically, all aspects
23 of copyright law.

24 Q And how have you received your training? Have you
25 had any formal courses, or --

1 A Sure, I have had, of course, courses in law school
2 on copyright and entertainment law, and the bulk of my
3 training is basically in practice in my own law firm.

4 Q Are there any recognized textbooks or looseleafs in
5 the field?

6 A Sure, Nemer, of course, is the guide of copyright.
7 I think everyone agrees that he is -- everyone looks to
8 Nemer, but of course, there are other recognized textbooks in
9 the copyright field.

10 Q Do you read them?

11 A Oh, routinely.

12 Q Are you a member of any professional organizations
13 and, if so, which ones?

14 A Yes. I am a member of the American Bar Association
15 Section on Copyright and Trademark, the District of Columbia
16 Section on Copyright and Trademark, those are the two
17 intellectual property sections.

18 Q And have you authored, or published any papers in
19 the area of copyright law?

20 A Intellectual property, generally, and I have
21 authored articles in the NAB magazine, Radioactive, which
22 goes out to its members, as well as I am now working on an
23 article for the American University Law Review.

24 MR. GUILLOT: Mr. Chairman, at this time the
25 Settling Devotional Claimants would like to offer Ms. Ann K.

1 Ford as an expert with respect to the law of copyrights. And
2 we tender the witness for voir dire on her qualifications as
3 such.

4 MR. KENNEDY: No voir dire.

5 CHAIRMAN ARGETSINGER: Without objection, the
6 witness will be accepted.

7 MR. GUILLOT: Thank you.

8 BY MR. GUILLOT:

9 Q Ms. Ford, have you had occasion to review any of
10 the materials presented as part of CTC's direct case
11 testimony in this proceeding?

12 A Yes, I have read Mr. Kennedy's testimony and the
13 transcript testimony.

14 Q And based on your review of that testimony and the
15 transcript, do you have an opinion as to the status of CTC's
16 copyrights and its program and program signal?

17 A Yes, I was very troubled when I read the direct
18 case, as well as the transcript testimony by, in my mind, a
19 case that CTC has affirmatively abandoned its copyright in
20 its broadcast programs.

21 Q Well, under what circumstances may a copyright
22 owner be deemed to have abandoned or forfeited its
23 copyrights?

24 A Basically, abandonment can be achieved merely by
25 basically failing to police your work, but in most cases it

1 is held to have occurred when there is some overt act whereby
2 the owner of the copyright has surrendered its rights.
3 Section 106 of the Act gives copyright owners a certain
4 amount of rights, one of which is to reproduce, one is to
5 distribute. And if, in fact, the copyright owner makes an
6 unrestricted gift without any control, the courts have held
7 that the copyright owner has abandoned and can therefore no
8 longer be remunerated for dissemination of his work.

9 Q Well, what facts in CTC's testimony have given rise
10 to your opinion that it has abandoned its copyrights?

11 A In the transcript, Mr. Kennedy has testified that
12 CTC sends up its programs in the satellites, so the people
13 can benefit, and CTC exercises no control over the
14 retransmission of its -- not only the retransmission of its
15 programming, but the transmission of its programming on
16 broadcast stations. Has entered into no licensing agreements
17 whatsoever, and basically, has no knowledge of who carries
18 that programming.

19 Q And that would be enough, in your opinion?

20 A Yes, CTC has basically dedicated its work to the
21 public by not even -- basically, putting out unrestricted use
22 of its programming via satellite.

23 Q Well, let me ask you another question. In your
24 opinion, how would the conclusion you have reached with
25 respect to their copyrights affect CTC's argument presented

1 in its direct case, and mentioned again here today, that it
2 has been harmed as a result of being unknowingly carried on
3 cable television systems?

4 A Well, having been not only an observer, but a
5 participant in these hearings, in my mind, the key harm to
6 all parties is the lack of control over their work. In this
7 case, CTC has basically created that lack of control of its
8 own -- on its own by not engaging in any kind of licensing
9 agreements for its work. For example, a client such as CBN
10 and other devotional programmers, enters into very specific
11 license agreements -- I have one here -- whereby they know
12 every station that carries that program across the country,
13 every territory, and has built into those agreements very
14 strong restrictions on the use of that programming on many
15 points.

16 In this case there is absolutely no license
17 agreement, no control. And the lack of control is of its own
18 making, and therefore, it cannot now come back and claim
19 harm. The harm was created by itself.

20 Q Thank you. I would like you to take a look at what
21 has been marked Settling Devotional Claimants Rebuttal
22 Exhibit R-15 for identification.

23 A (Perusing document)

24 Q Have you seen this before?

25 A Yes, I have.

1 Q And does this exhibit accurately embody the
2 testimony you have given to us today?

3 A Yes, it does.

4 Q Have you reviewed it to make sure that it is
5 accurate in all respects?

6 A Yes.

7 Q And is that your signature affixed to the
8 conclusion?

9 A Let me look -- (perusing document) -- yes, it is.

10 MR. GUILLOT: Mr. Chairman, at this time we would
11 like to offer and introduce Rebuttal Exhibit R-15 into
12 evidence.

13 CHAIRMAN ARGETSINGER: It is so entered.

14 (Whereupon, the document was
15 marked for identification as
16 Settling Devotional Parties'
17 Rebuttal Exhibit No. R-15 and
18 received in evidence)

19 CHAIRMAN ARGETSINGER: Mr. Kennedy?

20 MR. KENNEDY: Thank you.

21 CROSS-EXAMINATION

22 BY MR. KENNEDY:

23 Q It was asked in the last proceeding if we had a
24 license for our programming, copyrighted programming.

25 A Yes.

1 Q To my knowledge at that time, we did not have a
2 license. In my mind, a license was something that you had to
3 apply for --

4 MR. GUILLOT: Objection, Your Honor, I don't see
5 how Mr. Kennedy's opinions on what is meant by a license is
6 rebuttal to anything that we are talking about at this
7 moment.

8 MR. KENNEDY: I was getting ready to ask her a
9 question.

10 CHAIRMAN ARGETSTINGER: You may want to restate that
11 in the form of a question.

12 BY MR. KENNEDY:

13 Q Can you tell me, in your opinion, what does a
14 license comprise of?

15 A Well, basically, a license is -- let's put it this
16 way, a use of another person's copyrighted work without
17 permission constitutes infringement. And a license,
18 basically, is a permitted -- allows for a permitted use of a
19 work.

20 Q Now, if each one of our copyrighted programs had a
21 disclaimer on that program at the end of the show "copyright
22 1987, all rights reserved, unauthorized use, or reproduction
23 of this is not permitted", is that --

24 A That is not a license. There are two -- basically
25 two -- what you are really looking at is the statutory

1 formality. When you have a copyrighted program, for example,
2 and you fail to put notice, and therefore, at least until
3 this year -- as of 1989, notice is no longer required, but
4 back in 1987, when your program was being retransmitted, had
5 you not had notice, you would have deemed to have forfeited
6 your programming, regardless of what your intent was.

7 Q What do you mean by notice?

8 A Notice meaning that -- that is a different story
9 altogether. Abandonment has to do with what your intent was,
10 regardless of whether you put your notice on, or not. If, in
11 fact, your intent was to give an unrestricted gift to
12 everyone, put it on the satellite, let everyone take it,
13 without restriction, really the notice is a token compliance
14 with the formalities and doesn't get you around the
15 abandonment problem.

16 A license is an agreement you have with whoever
17 uses it, that they can use it with impunity. And I have no
18 indication that there was ever a license here. In fact, the
19 testimony indicates that there was no license.

20 Q So, if someone called us up and said, "Hey, I want
21 to use your program. I would like to take off a couple of
22 your shows off the satellite, may I do so?" Would a verbal
23 agreement constitute that?

24 A If you had a verbal agreement, possibly yes. Here,
25 according to this testimony, I believe it was your testimony,

1 there was no indication that you knew where the programs were
2 going, so obviously, there was no agreement.

3 Q Did you read the entire testimony?

4 A Yes, I did. And one of the claims, I think that
5 was made there was you didn't know what stations were
6 carrying you. In that case, you would not have had an
7 agreement with them to carry you.

8 Q And do you know what I was referring to?

9 A Yes, picking it up off the satellite, you didn't
10 know the station that was carrying you, taking it off the
11 satellite. You wouldn't have known what cable systems were
12 carrying you, that were retransmitting those broadcasts.

13 Q And if we had -- how would we get a license, I
14 guess, is what I am trying to ask, from someone who is going
15 to pick it up off the satellite without our permission? How
16 would we know?

17 A Okay. We can go over a couple of things. I know
18 in this CBN case they scramble their signal, so you have to
19 have a license to carry any CBN program. So, that's one
20 method.

21 Another method is to very strongly police your
22 work, if, in fact, there are indications from this Larson
23 Report, or some other report that someone is carrying you
24 without permission, you would write them a letter saying "You
25 are carrying without my permission, you need to get my

1 permission first, and let's enter a license agreement".

2 I don't have any evidence that that was ever done.
3 There was no policing of your work at all.

4 Q But you don't know for a fact that that was not
5 done?

6 A I don't see any evidence that that was done, no.

7 MR. KENNEDY: Okay, I would like to present before
8 the Tribunal CTC Rebuttal Cross-Exam Exhibit No. RX-5 and 5A.
9 These are two letters, one was written in 1988 by our sales
10 manager, and one was written by me in 1987.

11 (Whereupon, the document was
12 marked for identification as
13 CTC Rebuttal Exhibits Nos. RX-5
14 and RX-5A, respectively)

15 BY MR. KENNEDY:

16 Q Would you look over those, please? (Handing
17 documents)

18 A Yes, (perusing documents)

19 Q RX-5 is a letter from a pastor and his wife who
20 have a station out in Iowa, and ask us for permission to
21 carry programming. Does this letter constitute a license?

22 A Let me read this -- (perusing document) --

23 Q I am referring right now to RX-5.

24 A All right, let me read RX-5. (Perusing document)
25 It doesn't look really like a license, in the sense that

1 there is no -- I would say it was a letter of permission,
2 that you were granting them permission.

3 Q What is the difference?

4 A Ah --

5 Q It says directly on here you are licensed.

6 A Well, you have certain restrictions here that--
7 you need a list of the cable systems in your area that cover
8 -- I am not quite sure -- I suppose it could be a very loose
9 kind of a license, in a very general sense, for this one
10 station. It is a little unusual.

11 Q What about Exhibit RX-5A, 1987, August 14th?

12 A (Perusing document)

13 Q Any difference?

14 A It is a very rudimentary granting of permission, I
15 guess, in a very loose sense. It is not a typical standard
16 license agreement you would see with any restrictions of
17 note. But it is a granting of permission, I suppose, in a
18 very loose sense.

19 Q A while ago you also mentioned a verbal agreement,
20 and you said that that could constitute permission?

21 A Yes.

22 Q Is that correct?

23 A Yes, it could.

24 MR. KENNEDY: No more questions.

25 Are these ruled into evidence?

1 MR. GUILLOT: Excuse me, Your Honor, we would
2 object --

3 CHAIRMAN ARGETSINGER: Mr. Kennedy, you shouldn't
4 have asked.

5 MR. GUILLOT: I was getting ready to say something,
6 if he had not. We would object to the introduction of these
7 into evidence because these materials, these two exhibits, 5
8 and 5-A, are prejudicial in that they suggest that every
9 single person that CBN does business with is given a license
10 agreement. We have no objection to there being entered, as
11 long as we have the understanding by Mr. Kennedy and the
12 Tribunal that these are two letters that were sent, but this
13 is not something that is routine with them.

14 That kind of understanding would eliminate the
15 prejudicial effect, and then we would have no problem.

16 MR. KENNEDY: It is routine for anyone to call us,
17 that we would either give them verbal permission, and follow
18 it up with a letter?

19 MR. GUILLOT: Excuse me, we are asking for a ruling
20 on the admissibility of these, and now you are providing
21 extra testimony on oral and other arrangements that do not
22 relate to these materials. All we are seeking here is just a
23 ruling on these letters, as letters, to go into evidence.

24 CHAIRMAN ARGETSINGER: The objection will be
25 overruled. You will have an opportunity to -- normally,

1 there has to be a sponsoring witness, and tomorrow you will
2 have an opportunity to cross this witness/counsel, and you
3 will have a chance to cross-examine on it.

4 MR. GUILLOT: That's fine, as long as we do have a
5 chance to question him as to the exhibit.

6 I have just a couple of questions for Ms. Ford on
7 redirect, if that's permissible, Mr. Chairman.

8 CHAIRMAN ARGETSTINGER: Yes, indeed.

9 REDIRECT EXAMINATION

10 BY MR. GUILLOT:

11 Q Ms. Ford, can we infer from your testimony, that a
12 copyright owner has somewhat of a duty to monitor
13 unauthorized uses?

14 A Yes.

15 Q In your opinion, could a copyright be abandoned
16 even though copyright notice, or disclaimer, as Mr. Kennedy
17 refers to it, is affixed to certain of the copies which are
18 distributed?

19 A Most certainly, in fact, a case is cited in my
20 testimony, in some cases it was sort of a haphazard notice,
21 affixation, a token application notice does not get around
22 the idea that you have abandoned your rights to the work.

23 Q And could a copyright be deemed abandoned at law,
24 even though some instance, for example, these instances of
25 licensing exists?

1 A Yes.

2 MR. GUILLOT: Thank you.

3 We have no further questions.

4 COMMISSSTONER AGUERO: Ms. Ford, suppose I produce
5 television programs, hundreds of programs, but I never
6 copyright the programs in my life, but I license the programs
7 --

8 THE WITNESS: Oh, boy.

9 COMMISSSTONER AGUERO: I am a copyright owner, or I
10 am not?

11 THE WITNESS: Well, that's a good question. Back
12 in 1987, you are required -- so, if you are talking '87 as
13 opposed to '89, in 1987, which is the year that we are
14 talking about here, you were required to do certain statutory
15 things to protect your work. And one of them was putting
16 notice, for example, on your work.

17 COMMISSSTONER AGUERO: That's the C with the circle?

18 THE WITNESS: Yes, that's the C with the circle.
19 And if you failed to do that, and you didn't basically
20 rehabilitate yourself later, by sending out substitute
21 notices on -- let's say some videotapes went out and then you
22 said, Whoops, we forgot to put the notice on, let's send out
23 substitutes -- if you didn't do that, and you wanted to be
24 compensated and went to court, you could basically be out of
25 luck. You could be held to have dedicated your work to the

1 public, and therefore, you could no longer receive any money,
2 in infringement action, or I suppose any royalties either, it
3 is the same thing.

4 COMMTSSSIONER AGUERO: But if at the same time, I am
5 selling the program with a license to several stations in the
6 country, but suppose another station picks up my program for
7 free, do I have any rights, even if my program is
8 uncopyrighted?

9 THE WITNESS: You have dedicated your work to the
10 public, if you have lost your right in the copyright, you
11 have dedicated it. Say, you want to sue them for
12 infringement, you couldn't.

13 COMMTSSSTONER AGUERO: I have no right?

14 THE WITNESS: No, you couldn't collect, because it
15 is call in the public domain. You see these wonderful movies
16 like It Is A Wonderful Life, 39 Steps -- Frank Capra failed
17 to renew his copyright, that was a statutory formality, and
18 in the olden days you had to renew a copyright. Now you have
19 one big block of copyright, and because of that fatal
20 mistake, It Is A Wonderful Life can be copyrighted by
21 anybody, and sold with impunity. They could not be sued on
22 infringement.

23 CHAIRMAN ARGETSINGER: I imagine someone lost their
24 job over that?

25 THE WITNESS: That's right.

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1 COMMISSSTONER AGUERO: Can Mr. Kennedy sue this
2 station who picked up his program without his permission?

3 THE WITNESS: Okay, that's an interesting question.
4 Mr. Kennedy -- I don't know the statutory formality issue
5 here. Basically, the copyright, the compulsory license that
6 we are talking about here, is a congressionally mandated
7 license for cable carriage. And if the cable system failed to
8 pay its royalty under the Statement of Account, and he wanted
9 to sue the cable system, the analysis would identical,
10 because there the claim -- the cable system would say "You
11 have abandoned your copyright, I am no longer liable". And
12 they would be right in that case.

13 Because here it is no different than an
14 infringement claim, the compulsory license is a
15 congressionally mandated license without which he would have
16 an infringement.

17 COMMISSIONER AGUERO: Thank you, Ms. Ford.

18 CHATMAN ARGETSINGER: Mr. Cassler?

19 MR. CASSLER: Ms. Ford, would there be any
20 difference in your analysis between a potential infringer who
21 has used a copyright, possibly for the reason that that
22 infringer thought -- or alleged infringer thought that it was
23 in the public domain, that it was dedicated, that it was for
24 anybody's use? And in this situation where your client is a
25 rival for royalties deriving not at all from your client's

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1 own efforts, but the efforts of Mr. Kennedy?

2 Do you see what I mean?

3 THE WITNESS: I got the first part, but not the
4 second.

5 MR. CASSLER: You got the first part. There is a
6 situation where someone is using a work, thinking it was
7 dedicated to the public domain, and maybe it would be unfair
8 to charge that user for infringement.

9 THE WITNESS: Well, in the cases that I have cited
10 in my testimony, it didn't matter whether or not the alleged
11 infringer was aware that there was a dedication to the
12 public. The defense at the time was the defense of
13 abandonment, but my guess is that they just took it, and they
14 really just took it, and that was a defense -- post hoc
15 defense.

16 When you abandon a work I don't think the intent--
17 whether the cable system knew, or whether you know, I mean,
18 I don't think it really matters.

19 MR. CASSLER: But what I am asking is, I could
20 understand the cable system not being deemed an infringer, if
21 Mr. Kennedy abandoned his work.

22 THE WITNESS: Yes, right, okay.

23 MR. CASSLER: But why should you get more royalties
24 than would have occurred if Mr. Kennedy's copyright was still
25 in existence?

1 THE WITNESS: Well, my understanding of what Mr.
2 Kennedy is seeking is royalties based on a claim of harm. It
3 is no different than he would -- in an infringement suit
4 where he wanted remuneration for the use of his mark. Here he
5 wants to be remunerated for the use of his mark. If, in
6 fact, he has abandoned his mark, I don't see what his claim
7 is. He is here to be recompensed for the use of his mark,
8 but in fact, he couldn't get money anywhere. I don't see--
9 do you understand what I am saying?

10 MR. CASSLER: Yes.

11 CHAIRMAN ARGETSINGER: Are there any other
12 questions as a result of our questions?

13 (No response)

14 CHAIRMAN ARGETSINGER: If not, thank you, Ms. Ford.

15 (Whereupon, the witness was excused)

16 CHAIRMAN ARGETSINGER: Well, that will conclude the
17 hearings for today. And we will be back at 10:00 o'clock
18 tomorrow morning. And everyone got the date as to Findings
19 of Fact and replies.

20 (Whereupon, at 3:10 p.m., the hearing was
21 adjourned, to reconvene at 10:00 a.m., Tuesday, December 5,
22 1989)

23

24

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Cable Copyright Royalty Distribution Proceedings, -
Phase II,
Docket No. CRT 89-2-87CD

Before: Copyright Royalty Tribunal

Date: December 4, 1989

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.

A handwritten signature in cursive script, reading "Phyllis Young", is written over a horizontal line.

1987-1/2 FORM 3 CABLE SYSTEMS
FEE GENERATION BY CTC PROGRAMMING

Station	CTC Program Hours/Wk	Overall Station Hours/Wk	Percent CTC Program	Station Fees Generated	CTC Fees Generated
KFCB	5	126	4.0%	\$40,025.00	\$1,588.29
KTBN	2	164	1.2	22,653.00	276.26
KTBO	2	162	1.2	14,358.00	177.26
KTBW <u>1/</u> <u>2/</u>	2	164	1.2	2,187.00	26.67
WCFC	7	160	4.4	60,460.00	2,645.13
WCLF	42	168	25.0	33,483.00	8,370.75
WHFT	2	164	1.2	19,850.00	242.07
WHMB	0.5	168	.3	38,423.00	114.35
WHME	0.5	168	.3	3,991.00	11.88
WKOI <u>3/</u> <u>4/</u>	2.0	164	1.2	12,117.00	147.76
WPCB	3	160	1.9	45,695.00	856.78
WTJC <u>5/</u>	6.5	112	6.0	14,719.00	854.23

CORRECTED TOTAL: \$15,311.43
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- 1/ KTBW - Error in Overall Station Hrs. Should be 164, not 168.
All TBN stations have a weekly 4 hr. shut-down to maintain equipment. (Per TBN Chief Engineer George Murray).
- 2/ WCFC - ERRORS THROUGHOUT - Hours per week are 7, not 3.
- Overall station hours are 160, not 168. WCFC shuts down 8 hours per wk for maintenance per station manager, Phil Mowbary.
- CTC program % should be 4.4, not 1.8.
- Fee Gen. shd. be changed to \$2,645.13
- 3/ WKOI - ERRORS THROUGHOUT - CTC Program hrs. should be 2.0, not 1.5.
- Overall station hours should be 164 not 168, per TBN Chief Eng. Murray.
- CTC Program % should be 1.2%, not .9.
- CTC Fees Gen. should be \$147.76.
- 4/ WPCB - Error in Overall Station Hrs. Should be 160, not 168.
WPCB shuts down 8 hrs. weekly.
- CTC Program % should be 1.9%, not 1.8%
- CTC Fees Gen. should be \$856.78
- 5/ WTJC - ERRORS THROUGHOUT - CTC Prog. hrs. are 6.5, not 2.
- CTC Prog. % is 6.0%, not 1.8%.
- CTC Fees Gen. shd. be \$854.23, not \$262.84.



CHRISTIAN TELEVISION NETWORK

P. O. BOX 6922 • CLEARWATER, FLORIDA 34618-6922 • PHONE: (813) 535-5622

July 1, 1988

Rev. and Mrs. H. L. Meyers
World Out Reach for Deliverance, Inc.
Keokuk, Iowa 52632

Dear Believers,

Thank you for your letter of June 22, 1988 regarding the program schedule for the Christian Television Network.

We would be very happy to have you join our network. The requirements are very simple. We need a list of cable systems in your area who carry your station.

This letter will serve as your license to broadcast live or record and rebroadcast any of the Christian Television Network produced programs. You may need to secure permission from the other broadcasters on our network.

I am enclosing a current program schedule and a copy of the TV Alternative, which describes many of our network programs. Please let me know if you have any questions.

Sincerely,

Clay Mullins, Director
Network Sales

CM:bb

Enc.

cc: Bob Kennedy ✓



Christian Television Network

CTC R-X 5-A

P. O. BOX 6922 • CLEARWATER, FLORIDA 33518-6922 • PHONE: (813) 535-5622

August 14, 1987

Mr. Wayne Marler
Box 96
Whitley City, KY 42653

Dear Mr. Marler:

Bob D'Andrea told me you called and requested permission to use our programming on your station. This letter will serve as your authorization to rebroadcast any or all of the programs, currently aired or to be aired in the future on the Christian Television Network.

Our broadcasts are available 24-hours a day on GTE Spacenet 1, transponder 3, receiver 5, and at no charge to you. However, we do request that you let us know what programming you will be airing, what cable systems, if any, will be picking up your station, and the approximate size of your viewing audience.

I have enclosed a CTN information packet and a program schedule for your information. If you have any questions, please don't hesitate to call me.

Yours for the Gospel
shown in every home,

A handwritten signature in cursive script, reading "Robert T. Kennedy".

Robert T. Kennedy
Director of Cable Relations
and Special Projects

RTK/bt